

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

76-1149

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P75

**United States Court of Appeals
For the Second Circuit**

THE UNITED STATES OF AMERICA,

Appellee,

vs.

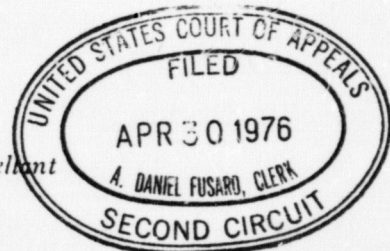
BENJAMIN EISENBERG,

Defendant-Appellant.

*On Appeal From The United States District
Court For The Southern District of New York*

Appellant's Appendix

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DATE	PROCEEDINGS
12-3-75	Filed affdet. of Mark A. Speiser re: suppl. the Govt.'s response to a motion for discovery.
12-18-75	Filed documents forwarded by Magistrate Jacobs: docket entry sheet, indictment warrant, S.D.N.Y., disposition sheet, notice of appearance, appearance bond copy of indictment S.D.N.Y.
12-22-75	Filed Govt.'s request to charge.
1-08-76	Before Judge Pollack- jury trial begun.
1-09-76	Trial cont'd. and concluded. Jury verdict-deft. found guilty on counts 1, 2, 3 and 5 and not guilty on count 4. Deft. to submit motion papers. Pre-sentence report ordered. For sentence 3-9-76 at 11A room 506. Bail cont'd. Pollack, J.
03-15-76	Filed notice of appeal from judgment of 3-9-76. Mailed copies
3-09-76	Filed Judgment (atty. present) cts. 1, 2, 3 and 5 18 mons. impr. ea. count conc.-AND- FINED on cts 1, 2, 3 and 5 \$1,500. on ea. ct. total fine \$6,000. to be paid. 18:4203(a)(2). Pollack, J. issued all copies.
3-10-76	Filed surety bond in the sum of \$7,500. pending appeal.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
v. : 75 Cr. 850
BENJAMIN EISENBERG :
Defendant :

----- x

January 8, 1976,
10 A.M.

Before:

Hon. Milton Pollack,
District Judge and a Jury.

Appearances:

THOMAS J. CAHILL,
United States Attorney,
Mark A. Speiser, Esq.,
Special Attorney, Strike Force.
MICHAEL WASHOR, ESQ.,
Attorney for Defendant.

(A jury was duly impaneled and sworn.)

(Jury present.)

THE COURT: All right, Mr. Sepiser, you may address the jury.

MR. SPEISER: Thank you very much, your Honor.

Mr. Washor, madam forelady, ladies and gentlemen of the jury.

My name is Mark Speiser and I am a special attorney with the United States Department of Justice and I'm privileged to represent the government's interests today in this case.

My purpose at this point in the trial is merely to apprise you of what the government charges Mr. Eisenberg with and how the government intends to prove its case. What I have to say to you at this point in the trial is not evidence and you should not deem it to be evidence. The evidence that you must consider is the testimony that is elicited on the witness stand.

The government charges the defendant Benjamin Eisenberg with four counts of perjury and one count of obstruction of justice.

Mr. Eisenberg appeared before a federal Grand Jury sitting in this building on May 6, 1975, and before that Grand Jury he took an oath to tell the truth, the whole truth,

1 dhh
2 and nothing but the truth. The government contends that
3 in response to certain questions that were addressed to
4 Mr. Eisenberg on May 6, 1975, when he appeared before that
5 Grand Jury, he lied, he didn't tell the truth, and that his
6 answers were false.

7 This is what consists of the four counts of
8 perjury. In addition thereto, the fifth count of the indictment
9 charges Mr. Eisenberg with obstruction of justice. In that
10 charge the government alleges that Mr. Eisenberg's testimony
11 was both false and evasive to the degree that it impeded
12 and hindered the function of the Grand Jury in its investiga-
13 tion.

14 Ladies and gentlemen, at this point I shall read
15 to you a portion of the Grand Jury, of the indictment. That
16 is, the first four counts which charge Mr. Eisenberg with
17 perjury.

18 Mr. Eisenberg appeared before the Grand Jury
19 on May 6, 1975, in connection with investigations by Grand
20 Jury to determine the knowledge and extent of the partici-
21 pation by the defendant Benjamin Eisenberg and others
22 in situations wherein usurious loans and extensions of credit
23 had been made.

24 In addition, the Grand Jury was attempting to
25 determine the knowledge and the extent of participation by

1 dhh

2 the defendant, Benjamin Eisenberg, and others in transactions
3 wherein extortionate means were used in the collection of the
4 extensions of such credit.

5 Finally, the Grand Jury was attempting to determine
6 the identities of persons to whom the defendant, Benjamin
7 Eisenberg, and others associated with him had lent sums of
8 money at usurious rates of interest. The testimony is
9 as follows:

10 "Q Who owes you money?

11 "A Names, names I've forgotten. I don't pay any
12 attention to that. This is the type of business you just
13 forget about people that owe you money.

14 "Q Mr. Eisenberg, you loaned money out and if people
15 don't pay you back you just forget about it?

16 "A That's right.

17 "Q Have you ever threatened anybody in a situation
18 where --

19 "A No, siree, I'm not a gangster by any means and
20 never threatened anybody in my life.

21 "Q But you stated, Mr. Eisenberg, that a number of
22 your loans are still outstanding; is that correct?

23 "A If they are outstanding, if I get my money, I'm happy
24 to get it. I don't go looking for it. When they have it, they
25 come and pay me. I don't threaten anybody and I don't say you must

1 dhh

2 pay me or anything like that."

3 Count 2:

4 "Q You had known these people a number of years,
5 right?

6 "A Yes, they always pay me.

7 "Q You must know their last names, some of them.

8 "A No, I don't know their last names. I don't know
9 of anybody's last name as a matter of fact. In this business
10 nobody gives you a last name."

11 Count 3:

12 "Q Is \$500, Mr. Eisenberg, the total amount you have
13 ever lent any individual?

14 "A Any individual?

15 "Q Yes, at one time.

16 "A Well, I've loaned -- I've loaned somebody more than
17 that, but a friend.

18 "Q Who?

19 "A A friend. I wouldn't divulge his name because he
20 wouldn't like the idea.

21 "Q Mr. Eisenberg, you are going to be required to
22 divulge his name because the Grand Jury immunity order says
23 that you must answer all our questions.

24 Now would you please tell us the name of the
25 individual to whom you have lent money more than \$500?

dhh

"A I'm trying to remember. I can't remember who I loaned \$500. It is not easy --

"Q I will ask you again.

You just indicated that you don't want to give us the name of the individual who you lent a lot of money to because he's a friend of yours.

What is the name of that friend?

"A The name of the friend?

"Q Yes.

"A Is it permissible for me -- must I tell you? Maybe this man doesn't want to know who -- he don't want his name involved. He's a married man, he has a family.

"Q Mr. Eisenberg, you are required because of the fact that you have been granted immunity to give us the name of that individual.

"A His name is Jack.

"Q Jack what?

"A I don't know his second name.

"Q Where does he live?

"A I don't know wher he lives.

"Q He is a friend of yours and you don't know his last name?

"A I know many people. I don't know their last name. I know them for many years and they never tell me their

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7

2 last name."

3 Count 4:

4 "Q How much do you usually lend money at?

5 "A I loan these people money so they could straighten
6 out their gambling --

7 "Q You didn't answer my question.

8 How much do you lend them money at, what rate?

9 "A I don't lend them money at any rate. I only
10 lend them money to get them even with their debts so they
11 can continue playing.

12 "Q Mr. Eisenberg, you never loaned anybody money
13 and charged them interest?

14 "A If I did?

15 "Q Yes.

16 "A I possible did, yes.

17 "Q On occasions, then, you did loan people money
18 and charged them interest?

19 "A On occasions, yes, sir, I did.

20 "Q How much interest?

21 "A I don't remember."

22 Count 5 of the indictment, as I have indicated
23 to you, charges the defendant with obstruction of justice
24 and I won't read the testimony that is comprised in that
25 count at this point. You will hear that testimony from the

1 dhh

8

2 trial.

3 At this point, I would now like to tell you how
4 the government is going to prove that Mr. Eisenberg's responses
5 were false.

6 The first witness who you will hear testimony is
7 the foreman of the Grand Jury who will state to you that
8 on May 6, 1975, Mr. Eisenberg did appear before a federal
9 Grand Jury and took an oath to tell the truth. And he will
10 relate to you further the nature of the investigation
11 that that Grand Jury was conducting at that time, and the
12 purpose for which Mr. Eisenberg was called before that
13 Grand Jury.

14 Now, my second witness will be an individual
15 by the name of Robert Aronowitz. Mr. Aronowitz will testify
16 that on one occasion he borrowed from the defendant Benjamin
17 Eisenberg \$30,000 and that for a period of four weeks --
18 four years thereafter every single week he paid Mr. Eisenberg,
19 except for a couple of weeks, \$600, and that over that four-
20 year period he repaid Mr. Eisenberg on that \$30,000 loan in
21 excess of \$120,000.

22 And Mr. Aronowitz will further indicate to you
23 the nature of the conversations that he had with Mr. Eisenberg
24 relative to the arranging of that loan and how that loan
25 would be collected, and Mr. Aronowitz will further indicate

1 dhh
2 to you what Mr. Eisenberg said to him in those situations
3 where Mr. Aronowitz was unable to come up with the money
4 that he was required to pay Mr. Eisenberg.

5 Mr. Aronowitz will further tell you that the
6 \$600 weekly payments they made to Mr. Eisenberg were payments
7 that were characterized as interest on the \$30,000 loan. That
8 is, that each \$600 payment was not reducing the principal
9 of the loan \$30,000. He will tell you that Mr. Eisenberg
10 indicated that the only way the \$30,000 loan can be eliminated
11 would be by paying \$30,000 in one lump sum together with
12 the \$600 interest payment for that week.

13 You will further here, as a second witness, Mr.
14 Michael Dubler. Mr. Dubler will testify to you that on one
15 occasion he borrowed \$1,000 from Mr. Eisenberg, and that
16 Mr. Eisenberg set the terms of that \$1,000 loan, such that
17 Mr. Dubler was to pay back Mr. Eisenberg over a ten-week
18 period \$120 every week.

19 So that over this ten-week period Mr. Eisenberg
20 received the \$1,000 loan back plus \$200 which was
21 characterized as interest. And Mr. Dubler will further
22 testify to you that on several occasions Mr. Eisenberg
23 screamed at him and threatened him that if he didn't pay
24 back that loan, he would be in trouble.

25 Now, ladies and gentlemen, you will hear certain

1 testimony, about Mr. Aronowitz and his backgr und which
2 will indicate to you that Mr. Aronowitz is not the most
3 upstanding citizen that you could conceive of. But, ladies
4 and gentlemen, this will be brought out on my direct examina-
5 tion of Mr. Aronowitz. But I want to advise you, ladies
6 and gentlemen, that despite the --

7
8 MR. WASHOR: Objection.

9 THE COURT: Never mind your advice. The advice
10 will come from the evidence. Maybe that was just an un-
11 fortunate use of language. Just go on and say what you want
12 to prove.

13 MR. SPEISER: Your Honor, ladies and gentlemen,
14 you should not be distracted by Mr. Aronowitz's revelation
15 of his past history.

16 MR. WASHOR: Objection.

17 THE COURT: The objection is overruled.

18 Have you anything further to say to the jury?
19 The jury will understand that the purpose of an opening
20 statement is not to argue the case. That will come at the
21 end of the case. The purpose of an opening statemen is
22 to give you a roadmap, an outline, of what the lawyer intends
23 to prove. Whether he has proved it and what it means and
24 how you evaluate the witness' testimony will be a subject
25 that we will discuss at the end of the case.

2 Is there anything else you want to call to the
3 jury's attention?

4 MR. SPEISER: Ladies and gentlemen, I submit
5 to you that after you heard the testimony, both Mr. Dubler
6 and Mr. Aronowitz and the circumstances surrounding those
7 loans, that you will understand in your eyes and in your mind
8 that Mr. Eisenberg was answering falsely and was lying
9 when he said he didn't remember the names of the individuals
10 who he lent money to or that he never threatened any of
11 these individuals. Thank you very much.

12 THE COURT: All right, Mr. Washor.

13 MR. WASHOR: Your Honor, we will exercise our right
14 not to address the jury at this time.

15 THE COURT: All right, ladies and gentlemen,
16 that concludes the opening statements. I will now excuse
17 you for luncheon. Please return so that we can resume
18 at 2 o'clock.

19 This is room 905 on the 9th floor and I think
20 that you know how to get to the jury room from the elevators.
21 You are now excused.

22 (Jury excused.)

23 MR. WASHOR: Your Honor, will I be able to
24 address the Court in the absence of the jury?

25 THE COURT: Yes. We will wait a minute.

1 dhh
2 MR. WASHOR: Your Honor, I would ask the Court
3 to instruct counsel on the nature and manner of how we are
4 to put the basis of our objections the record. I recognize
5 that you don't tolerate long speeches or wish the grounds
6 of the objection to be stated in the presence of the jury.

7 THE COURT: No, that is not quite it. An objection
8 should set forth in legal terms what the objection is.
9 It shouldn't contain evidentiary language.

10 MR. WASHOR: I appreciate your admonishment.

11 Your Honor, I would request that any material
12 that would reflect improprieties or any immoralities, con-
13 victions, criminal records of any of the witnesses be given
14 to counsel at this juncture.

15 I didn't know the names of the witnesses until
16 the time that the 3500 material was produced. I was not
17 given that opportunity; as a result of that fact to subpoena
18 any FBI records or records from state investigative powers
19 that would reflect prior involvements.

20 THE COURT: Have you got a rap sheet for the
21 witnesses that are involved?

22 MR. SPEISER: I don't have a rap sheet for the
23 witnesses involved. I can state to the Court and to Mr.
24 Washor the only conviction that exists on the part of Mr.
25 Aronowitz that I was referring to. I will be glad to supply

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them with that.

THE COURT: All right, supply that.

MR. WASHOR: I'm sorry, I didn't hear.

THE COURT: He said he will be glad to supply it to you. Glad or not, he will supply it. What else?

MR. WASHOR: In light of the fact that I still have reading material would the Court permit the courtroom to stay open during the lunch hour so that I can accomplish that without delay?

THE COURT: That's a subject you can work out with the clerk. But I'm glad he will be glad to accommodate you.

MR. SPEISER: May I make a statement on the record as to the lateness of my handing over the 3500 material to Mr. Washor?

THE COURT: I don't believe that is necessary. You were not legally late. It is a practical imposition on the trial to wait until a jury is impaneled or a case is going to go forward.

All right, 2 o'clock, gentlemen.

(Luncheon recess)

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AFTERNOON SESSION

2 P.M.

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(Jury present.)

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(Government's Exhibit 1 received in evidence.)

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MR. SPEISER: At this time, your Honor, the government would like to offer into evidence Government's Exhibit No. 1, which is a stipulation which has been entered into between counsel for the defendant and myself.

(Government's Exhibit 1 received in evidence.)

MR. SPEISER: I shall now read from Government's Exhibit 1, which is a stipulation that has been entered into between Mr. Washor, attorney for Mr. Eisenberg and myself.

(Mr. Speiser read to the jury from Government's Exhibit 1 in evidence.)

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MR. SPEISER: At this time, your Honor, the government would offer into evidence Government's Exhibit No. 2, which is the Grand Jury transcript which has been provided by Mr. Blitz, and which he has indicated and which the parties have stipulated to has been a complete and accurate version of the testimony of Mr. Eisenberg.

THE COURT: All right.

(Government's Exhibit 2 received in evidence.)

MR. SPEISER: The government will call as its first witness Charles Fink.

C H A R L E S E. F I N K, called as a witness, having
been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPEISER:

Q Mr. Fink, how are you employed?

A I'm retired. I was formerly employed by the
Defense Contract Administration.

Q Mr. Fink, I would like to direct your attention
to February 19, 1975, and ask you whether on that date
you were selected to serve as a member of a federal Grand
Jury in the Southern District of New York?

A I was.

Q Did you hold a position on that Grand Jury?

A I did.

Q Would you please state that position?

A Foreman.

Q Who appointed you to that position?

A I believe it was Federal District Court Judge
Eisenstein.

Q Directing your attention to May 6, 1975, did an
individual by the name of Benjamin Eisenberg appear before
your Grand Jury and testify before your Grand Jury?

A Yes, he did.

Q Do you see Benjamin Eisenberg here today?

1 dhh Fink-direct 16

2 A Yes, I do.

3 Q Would you please point him out.

4 MR. WASHOR: I will acknowledge it is the defendant,
5 your Honor.

6 THE COURT: You may point him out. Mr. Frank, where
7 is he? Where is Eisenberg? Do you see him in the courtroom?

8 A I think he charged the jury. Eisenstein.

9 THE COURT: We are talking about Eisenberg,
10 Benjamin Eisenberg. Do you see Benjamin Eisenberg in the
11 courtroom?

12 THE WITNESS: No, I don't.

13 MR. WASHOR: Your Honor, notwithstanding that--

14 THE WITNESS: Oh, I got mixed up.

15 THE COURT: What did you think I was asking you?

16 THE WITNESS: I that you asked me about the judge.

17 THE COURT: You are talking about Judge Edelstein.

18 I am talking about Benjamin Eisenberg.

19 THE WITNESS: I do see him in this courtroom.

20 THE COURT: Which gentleman is he?

21 THE WITNESS: The gentleman on the right, my right.

22 THE COURT: Very good.

23 Q Mr. Fink, did you administer an oath to Benjamin
24 Eisenberg before he testified?

25 A Yes, I did.

1 dhh Fink-direct 17

2 Q Do you recall what that oath was?

3 MR. WASHOR: Objection.

4 THE COURT: You may answer whether you recall
5 what the oath was. Do you recall what it was? Just yes or
6 no.

7 A Yes.

8 Q Can you state that oath?

9 A Do you solemnly swear --

10 MR. WASHOR: Objection.

11 THE COURT: Overruled. Go ahead.

12 A Do you solemnly swear the testimony you are about
13 to give to this Grand Jury in the matter pending before
14 it is the truth, the whole truth and nothing but the the
15 truth, so help you God?

16 Q Did Mr. Eisenberg respond to that oath?

17 A He did. He said "I do."

18 Q Mr. Fink, who was the government attorney questioning
19 Mr. Eisenberg on May 6, 1975?

20 A Mr. Speiser and Mr. Eberhardt.

21 Q Mr. Fink, in connection with what particular
22 type of investigation did Benjamin Eisenberg appear as
23 a witness?

24 A To determine the violation of federal --

25 Q Mr. Fink, let me --

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Fink-direct

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CROSS

THE COURT: Just a minute.

MR. WASHOR: Excuse me, your Honor, I object.

THE COURT: Please. Just let me run the courtroom,
will you?

THE WITNESS: Federal criminal --

THE COURT: Go ahead.

THE WITNESS: Prohibiting gambling, racketeering,
loan sharking, extortion and other crimes.

Q Mr. Fink, what was the purpose of Benjamin Eisenberg's
being called as a witness before your Grand Jury?

MR. WASHOR: Objection, your Honor.

THE COURT: Overruled.

A To determine if Mr. Eisenberg possessed any
information pertaining to the lending of moneys by high
interest by him or third parties, and the use of force
by these third parties to collect these moneys.

Q Thank you very much, Mr. Fink.

MR. SPEISER: I have no further questions.

THE COURT: Any cross?

MR. WASHOR: With your Honor's permission.

CROSS-EXAMINATION

BY MR. WASHOR:

Q Mr. Fink, was Mr. Eisenberg a target of that particula
Grand Jury investigation?

1 dhh Fink-cross 19
2 redirect
3 MR. SPEISER: Objection, your Honor.
4 THE COURT: Overruled. Do you know what "a target"
5 means?
6 THE WITNESS: Yes, sir.
7 THE COURT: All right. You may answer his question.
8 A As I recall, I think he was. I'm not --
9 Q Thank you, sir.
10 MR. WASHOR: No further questions.
11 THE COURT: Anything else?
12 REDIRECT EXAMINATION
13 BY MR. SPEISER:
14 Q Mr. Fink, can you explain to the jury what you
15 mean by the fact that Mr. Eisenberg was a target of the Grand
16 Jury investigation?
17 A I believe his name was brought up by two witnesses.
18 Q Thank you very much, Mr. Fink.
19 THE COURT: Is what you understood by the word
20 "target"?
21 THE WITNESS: Yes, sir.
22 THE COURT: In other words, that his name had been
23 mentioned by two witnesses and you wanted to find out if
24 he had any knowledge on the subject matter?
25 THE WITNESS: That's right, sir.
THE COURT: Were you at that time seeking to

obtain information that would indict him?

THE WITNESS: We were asking him for information.

THE COURT: You were asking for information?

THE WITNESS: Yes.

THE COURT: Were you asking him for information about himself or asking him for information of what he knew?

THE WITNESS: of what he knew.

THE COURT: All right. Step down.

MR. WASHOR: Your Honor, with the Court's permission.

THE COURT: Go right ahead.

RE CROSS EXAMINATION

BY MR. WASHOR:

Q Mr. Fink, didn't you ask Mr. Eisenberg if he were a bookmaker?

MR. SPEISER: Objection, your Honor, Mr. Fink didn't ask any questions at all.

THE COURT: What's that?

MR. SPEISER: Mr. Washor asked Mr. Fink if he asked Mr. Eisenberg--

THE COURT: Mr. Fink would be in the best position to know that, wouldn't he?

THE WITNESS: No.

Q Is it not a fact, sir, that Mr. Eisenberg was asked if he were a bookmaker in that Grand Jury?

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A I'm sorry, I can't recall that.

Q Do you recall whether or not Mr. Eisenberg was asked if he was a shylock and loaned money to people at interest rates above the legal rate?

A If he was asked?

Q Do you recall whether or not Mr. Eisenberg was asked if he was a shylock?

A I'm sorry, I don't recall.

MR. WASHOR: Would the Court bear with counsel just one moment, please?

Q Do you recall whether or not Mr. Eisenberg during that Grand Jury proceeding was asked questions about his own personal illegal conduct?

A Your Honor, may I make a statement, please?

THE COURT: No, all he wants to know --

THE WITNESS: I don't recall that.

THE COURT: That's all. There is nothing wrong with that.

THE WITNESS: It is so long ago.

THE COURT: Then just tell him that. You don't remember. The Grand Jury transcript, testimony, is here, and it's been marked in evidence as Government's Exhibit 2.

THE WITNESS: That's right.

Q The last question, Mr. Fink.

Do you recall Mr. Eisenberg admitting before that very Grand Jury that he was a shylock, a bookmaker and a gambler?

A I don't recall.

Q Thank you, sir.

MR. WASHOR: No further questions.

THE COURT: Thank you. You may step down.

(Witness excused.)

MR. SPEISER: At this time the government would call Kenneth Giel.

K E N N E T H A. G I E L, called as a witness,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPEISER:

Q Mr. Giel, how are you employed?

A I'm currently employed as a special agent with the Federal Bureau of Investigation.

Q How long have you been so employed?

A For approximately five years.

Q Mr. Giel, I would like to present to you Exhibit No. 2 and ask you to turn to those pages that I direct you to turn to and I will read certain questions --

MR. WASHOR: I object to this procedure, your Honor.

1 THE COURT: I don't know what the procedure is.
2
3 Your objection is premature. Go ahead. After you do what?

4 MR. SPEISER: I want Mr. Giel to turn to certain
5 pages that I indicate him to turn to in the transcript of
6 Mr. Eisenberg's testimony and I want to read certain of
7 Mr. Eisenberg's testimony into the record before the court,
8 and I will read the questions and Mr. Giel will read the
9 responses.

10 THE COURT: That's a convenient way of reading
11 the transcript and I will allow it. It will help us understand
12 it.

13 You understand that this witness is here only to
14 be a person in the capacity of the responder to the questions.
15 He himself was not answering the questions, but in order
16 for you to get it in question and answer form, through
17 your ears best, this is a convenient way of doing it and you
18 may so proceed.

19 MR. WASHOR: Your Honor, would you later on permit
20 me to put on the record--

21 THE COURT: I don't know anything about later on.
22 Just do what we are doing right now. Don't anticipate.

23 MR. WASHOR: Judge Pollack, I don't want to interfere
24 I wish to state the grounds of the objection. I don't wish
25 to interrupt this procedure since you have ruled and I don't

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Giel-direct

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ask to do it in the presence of the jury.

THE GROUND: The grounds?

MR. WASHOR: That's correct.

THE COURT: Write them out and send them up.
Write them out on a piece of paper.

Q Mr. Giel, I would like you to turn to page 26 of
that transcript.

THE COURT: This is the transcript that is in
evidence; is that right?

MR. SPEISER: Yes, your Honor.

THE COURT: And you are just doing this for the
convenience of calling the jury's attention to the content
of certain testimony, and this witness is not here testifying
as a witness, he is just here as your witness to assist
you in reading.

MR. SPEISER: Correctly stated, your Honor.

THE COURT: Go ahead.

A That was page 26?

Q Yes, Mr. Giel. I am going to begin reading on
line 23.

"Q Mr. Eisenberg, what bars do you go to?

"A Now? I don't go any more.

"Q What bars did you go to at the time you met these
individuals to lend the money?

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Giel-direct

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"A What bars did I go to?

"Q Yes.

"A At the time there was the Mayfair Bar at 47th Street. I used to go there very often."

THE COURT: This document is marked Court's Exhibit 1. The objection is overruled.

(Court's Exhibit 1 marked.)

Q Mr. Giel, I would like you to turn to page 33.

THE COURT: Mr. Speiser, don't forget that the purpose of what you are doing here is to call the jury's attention to something. If you keep your head down and mutter to yourself, they're not going to hear what you are saying and they're not going to understand what the witness is responding.

MR. SPEISER: Thank you, your Honor.

Q On page 33, Mr. Giel, I'm going to begin on line 21.

"Q In the number of years, that is, between 2 and 15, that you may have been lending money to individuals at rates of interest, can you please tell the Grand Jury one specific instance where you met an individual at a specific place to collect on one of those debts?

"A As a specific place?

"Q Yes.

"A On 40th and Broadway.

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Giel-direct

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"Q Who?

"A A fellow by the name of Lefty."

MR. WASHOR: Objection to the raising of the voice.

THE COURT: Overruled. Just keep a low key and talk in a monotone, please. Go ahead.

Q "Q When?

"A Maybe six years ago."

Q Mr. Giel, I would ask you to continue on page 34 and I will begin reading at line.

"Well, I haven't been coming to the City of New York for quite a while and I actually don't go around collecting money because I don't have" --

A Counsel, according to the transcript --

Q You are right. Excuse me. I would like to strike that, I apologize.

I would like you to turn, Mr. Giel, to page 38 and I will begin reading at line 25.

THE COURT: Mr. Speiser, I am going to make a suggestion for everybody's sake. You take your papers and get over here in front of the jury. Read the questions that you want to ask and answer the questions as they appear on there and just forget Mr. Giel for a minute.

My suggestion would be that you start from the beginning because up to now I think that we have had a little

Dubler-direct

difficulty in understanding what you are doing. When you

read a question, just say question and then say answer.

We will know that somebody was asking the questions

and Mr. Eisenberg was answering.

MR. SPEISER: You would like me to begin all over?

THE COURT: Yes.

You just do nothing.

THE WITNESS: Yes.

(Mr. Speiser read to the jury from Government's Exhibit 2 in evidence.)

MR. SPEISER: Your Honor, I have no questions of Mr. Giel at this time.

THE COURT: All right. You may step down.

(Witness excused.)

THE COURT: Anything else?

MR. SPEISER: I would like to call Michael Dubler
as a witness.

M I C H A E L D U B L E R, called as a witness, having

been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPEISER:

Q Mr. Dubler, how are you employed?

A Salesman.

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Dubler-direct

28

Q Mr. Dubler, do you know Benjamin Eisenberg?

A Yes.

Q Do you see him here today?

A Yes.

Q Would you please point him out?

A That's him.

Q Mr. Dubler, have you ever met the defendant Benjamin Eisenberg?

A Yes.

Q Do you recall when you did meet Mr. Eisenberg?

A About three and a half years ago.

Q Where did you meet Mr. Eisenberg at that time?

A In the store that I was employed in. The place of business.

Q Where was that store located?

A Manhattan, Third Avenue and 60th.

Q Do you recall the circumstances surrounding your meeting Mr. Eisenberg?

A Yes.

Q Can you relate those to the jury, please?

A I needed to borrow some money and I got an introduction to him.

MR. WASHOR: I'm sorry, your Honor, I didn't hear that clearly.

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Dubler-direct

29

THE COURT: It will be read to you.

(Answer read.)

Mr. Dubler, I going to ask you to speak louder,
if you can.

A Yes.

Q Mr. Dubler, who introduced you to Mr. Eisenberg?

A A mutual friend named Bernie.

Q Did Bernie personally introduce you to Mr.
Eisenberg?

A No. He said he knew someone and he would contact
me.

Q Did this someone eventually contact you?

A Yes.

Q This person, did he identify himself on the tele-
phone?

A Yes.

Q How did he identify himself?

A "This is Benny, Bernie's friend." Something like
that.

Q Do you recall the conversation that transpired,
if any occurred, during that telephone conversation?

A No. Not in the conversation. He said he would
come down and meet me.

Q Did Mr. Eisenberg in fact come down and meet you?

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Dubler-direct

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A Yes.

Q Where did he meet you?

A At my place of business at the time.

Q Did he come down to meet you that same day?

A Yes.

Q Did he come down alone to meet you?

A Yes.

Q What type of store were you working at at the time?

A Stereos, retail stereo store.

Q Did Mr. Eisenberg come in and introduce himself
to you?

A Yes.

Q Was there anyone else around at the time?

A There were other men in the store, but they were--
I was in the back of the store.

Q Did you have a conversation with Mr. Eisenberg
at that time?

A Yes.

Q Do you recall what was discussed during that
conversation?

A Yes.

Q Can you relate that to the best of your knowledge
at this time?

A I asked to borrow some money and subsequently

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Dubler-direct

31

he loaned me some. I asked to borrow a few thousand dollars
and he loaned me a thousand dollars.

Q You say you asked Mr. Eisenberg for a few thousand
dollars but he only lent you \$1,000?

MR. WASHOR: Objection.

A Right.

THE COURT: Don't repeat the testimony. Go ahead.

Q Can you explain to the jury why Mr. Eisenberg
didn't lend you the amount that you requested?

MR. WASHOR: Objection.

THE COURT: Sustained. Was there any reason for
the amount that was loaned?

A Well, he said he didn't know me that well, and
he asked me if I had some collateral. I said no. And then
he wouldn't loan me the amount I asked for. He loaned me
a thousand.

THE COURT: How much did you ask for?

THE WITNESS: I believe it was three.

THE COURT: 3,000?

THE WITNESS: Yes, sir.

THE COURT: And he loaned you a thousand dollars?

THE WITNESS: Yes.

THE COURT: Go ahead.

Q Did Mr. Eisenberg in fact give you the thousand

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dhh Dubler-direct

32

dollars at that initial meeting?

A Yes.

Q Did he have this thousand dollars physically with him or did he have to leave the store to get the money?

A No, he had it with him.

Q Do you remember the denominations of the money that he gave you?

A I think it was in hundred dollar bills.

Q At that time did you discuss with Mr. Eisenberg the terms surrounding the repayment of the money to Mr. Eisenberg?

A Yes.

Q Can you relate to the jury that discussion?

A I would pay 120 a week for ten weeks.

Q What was the \$20 characterized as, if at all, by Mr. Eisenberg that you were to repay him every week?

MR. WASHOR: Objection.

THE COURT: Was the \$20 characterized by Mr. Eisenberg?

THE WITNESS: It wasn't specifically pointed out as anything, just 120 a week for ten weeks.

THE COURT: Go ahead.

Q Did you in your own mind at that time understand what that \$20 was to be characterized as?

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Dubler-direct

33

MR. WASHOR: Objection.

A Yes.

THE COURT: Sustained.

Q Did Mr. Eisenberg at that time indicate to you how you were to repay him?

A Just that it would -- at that time I don't think it was pointed out how. It was just that it would be picked up. They would contact me.

Q Did Mr. Eisenberg indicate who would contact you?

A Not at that time.

THE COURT: Look, why don't you tell us what happened on that occasion so that we don't have to --

THE WITNESS: He loaned me the thousand dollars and he said that he would contact me.

THE COURT: Speak up, this jury wants to hear it.

THE WITNESS: He loaned me the thousand dollars and he said that he would contact me every Friday, I believe, the end of the week, and -- or it would be picked up.

I didn't go into specifics. I had the money. It was his thing to collect it from me.

THE COURT: All right.

Q Following that conversation that you had with Mr. Eisenberg, did anyone ever come around to collect any money from you?

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A Yes, at the end of the week another party came down to pick up the money.

Q Did you know who that party was at the time he collected this money from you?

A No. Just identified himself as Benny's friend, I believe.

Q Did you in fact give him the \$120?

A Yes.

Q Where did you meet him to pay him the money?

A In the store I was working at, that same store.

Q How long did you continue paying the \$120?

A For four or five weeks.

Q On each of those occasions, those four or five weeks, who came to collect the money?

A This other party, Penny's friend.

Q Did you subsequently learn who this other party was?

A Yes.

Q Who did you determine that to be, and how did you find that out?

MR. WASHOR: Objection.

THE COURT: First tell us what the name is.

THE WITNESS: The name of the party?

THE COURT: Yes.

A I never knew him by name.

1 dhh
2 THE COURT: What identification did you ascribe
3 to him?

4 THE WITNESS: I don't understand.

5 THE COURT: How do you identify him? The lawyer
6 wants to know who this was.

7 THE WITNESS: I found out that it was Benny's brother.

8 THE COURT: Benny's brother?

9 THE WITNESS: Right. In conversation that came
10 up. But not at that time, later on.

11 THE COURT: Do you know what Benny's brother's
12 name was?

13 THE WITNESS: No, sir.

14 THE COURT: All right.

15 Q Who told you that this was Benny's brother?

16 MR. WASHOR: Objection.

17 THE COURT: Overruled.

18 A Benny mentioned it in a phone call to me "Was
19 my brother there" That's the only reason I knew it.

20 Q Mr. Dubler, what happened after the four or
21 five weeks that you stated that you paid \$120 a week in
22 repayment of this loan?

23 A I couldn't pay any more. I subsequently joined
24 an organization called Gamblers --

25 MR. WASHOR: Objection.

2 THE COURT: You say you couldn't pay any more?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Next question.

5 Q Did you have any contact from Mr. Eisenberg
6 after you couldn't pay any more?

7 A Yes.

8 Q Do you recall you called Mr. Eisenberg or Mr.
9 Eisenberg called you?

10 A He called me.

11 Q Did you ever have Mr. Eisenberg's telephone number?

12 A No.

13 Q You never had his telephone number at home?

14 A No.

15 Q Did you ever have his telephone number at work?

16 A No.

17 Q Did you know where Mr. Eisenberg worked?

18 A No.

19 Q Did you know what Mr. Eisenberg did for a living?

20 A No.

21 Q What did Mr. Eisenberg say to you on the telephone
22 when he contacted you, when you told him you couldn't
23 pay \$120 a week any more?

24 MR. WASHOR: Objection.

25 THE COURT: What, if anything, was said to you in the

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dhh Dubler-direct

37

phone call that you say you had?

A He cursed me out in every possible way.

THE COURT: What else?

THE WITNESS: And he said that I have to; that I have to pay him.

THE COURT: What did you say?

THE WITNESS: I couldn't, and I wanted to work out something.

THE COURT: What did he say?

THE WITNESS: At that point he said I'd pay him a certain amount of money; that was what I understood was a miss, that was penalty at that week. And the next week I would continue to pay.

THE COURT: What was the amount of the penalty?

THE WITNESS: \$22, I believe, \$20, something like that.

THE COURT: The penalty was for not paying \$120 that was due that week?

THE WITNESS: Yes, sir.

THE COURT: What else was said in that conversation?

THE WITNESS: That was all that was said then. After, you know, he put me down, I should say, cursed me out.

THE COURT: Go ahead.

2 Q Mr. Dubler, you characterized that penalty as a
3 miss. What is meant by a miss?

4 MR. WASHOR: Objection.

5 THE COURT: What did you mean when you said "miss"?

6 THE WITNESS: Directed at me? Oh, I missed that
7 payment that week. I missed paying.

8 THE COURT: You missed means you failed to pay?

9 THE WITNESS: I failed to pay the 120.

10 THE COURT: And you had to pay \$22 because you
11 failed to pay on that Friday?

12 THE WITNESS: Yes, sir.

13 THE COURT: So you had to pay for that week \$142?

14 THE WITNESS: No, the \$20 was just the penalty
15 and then it would continue. There would be ten weeks.
16 That wee didn't count. If I paid 5 and then I paid the
17 \$20, the next week I would still -- the five. The \$20 was the
18 penalty for not paying that week. I didn't pay -- it was
19 just \$20 for not paying the 120.

20 Q Mr. Dubler, who did you pay this \$20 to?

21 A The fellow that picked up the 120 each week, Benny's
22 brother.

23 Q Where did you pay him this \$20?

24 A In my store.

25 Q When this person came around to collect the money

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Dubler-direct

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from you, did he come by himself?

A Yes.

Q How many weeks did you continue paying him \$20?

A Just the one week.

Q What happened the subsequent week?

A I wanted to -- I couldn't again, and I wanted
to renegotiate or --

MR. WASHOR: Objection.

THE COURT: You couldn't pay again?

THE WITNESS: Right.

THE COURT: Then did you have some conversation
with the man?

THE WITNESS: Yes.

THE COURT: What was the conversation and how
did it take place?

THE WITNESS: At the time he came into the store
and he again called me everything he could possibly call
somebody, and then he left. At that time. And then he called
me back.

Q When Mr. Eisenberg called you back, did you
have a conversation with him at that time?

A Yes.

Q What was said in that conversation?

A He wanted -- I wanted to change the payment. I

wanted to -- I couldn't afford to pay that kind of money each week with what I owed, and I wanted to work out a more -- something I could handle, a better payment arrangement of what I could handle.

Q Did you tell Mr. Eisenberg you wanted to meet with him to discuss that?

A Yes.

MR. WASHOR: Collection.

THE COURT: Just ask the witness what occurred.
Come on, tell us what happened on that occasion.

THE WITNESS: I wanted to make out a payment. I
wanted to pay --

MR. WASHOR: Objection.

THE COURT: Is this what you told him?

THE WITNESS: Yes, I told him --

MR. WASHOR: I withdraw my objection.

THE WITNESS: I told him I wanted to pay -- I couldn't afford to pay that and I wanted to pay \$50 a month against what I owed him.

And he subsequently called me everything in the book, and then hung up and then called back, I believe, and then -- I'm not sure if he came into the store again after that. I don't know if he came in before or after that, and eventually we got to an agreement.

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Dubler-direct

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THE COURT: What was the understanding?

THE WITNESS: The understanding that I would pay 50 a month, but he had changed how much money I owed him. But that wasn't of any interest to me. I was just interested in knowing that I would only have to pay 50 a month, not 120 a week. What this paid and how much I owed him in addition to it, and whatever the figures were, but I was concerned strictly with how much I had to pay a month, what I could afford to pay, not how long I would have to pay it or what I had to -- in addition to it.

Q Mr. Dubler, in connection with your last meeting with Mr. Eisenberg, where did that take place?

A In the store.

Q What was discussed during that conversation?

A Well, like I say, he cursed me out and he frightened me.

MR. WASHOR: Objection.

THE COURT: What did he say or do?

The objection is sustained.

What did he say or do?

THE WITNESS: He said I better have it and I better do this and he wouldn't accept anything else.

And at one point, what frightened me, he said someone would come down and see me, which I didn't know what--

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Dubler-direct

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I mean, I was afraid. I mean, I wasn't making the agreement and I owed him money and I was afraid. He yelled at me and I was afraid. He frightened me.

Q Mr. Dubler, did Mr. Eisenberg have your telephone number at home?

A No.

Q How much did you pay Mr. Eisenberg in total?

A About 800.

Q Did Mr. Eisenberg tell you that he had lent money to other people?

MR. WASHOR: Objection.

THE COURT: Sustained. Did you talk about any other people with Mr. Eisenberg?

THE WITNESS: In the initial -- when I first met him, when he first loaned me the money, he mentioned-- he impressed me with money he had loaned out.

THE COURT: What did he say in substance?

THE WITNESS: Well, he said -- the thousand dollars was nothing. In other words, he showed me that the loaning of the thousand dollars was peanuts. That he didn't know me -- you know, I've dealt in much bigger figures, but, you know, this was just a starter, something like that.

THE COURT: Did he say anything about any other transactions he was having or had?

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Dubler-direct
cross

43

THE WITNESS: No. Nothing specific.

Q Mr. Dubler, throughout your entire conversation that you had with Mr. Eisenberg, did you ever tell Mr. Eisenberg that your name was Jack?

A No.

Q What name did you always use with Mr. Eisenberg when you had conversations with Mr. Eisenberg?

A Mike.

MR. SPEISER: I have no further questions.

THE COURT: Is there any cross-examination?

CROSS-EXAMINATION

BY MR. WASHOR:

Q Was the name of the store or the place that you worked in Churchill's?

A Yes, sir.

Q Were you known to Mr. Eisenberg as Mike from Churchill's?

A Do I know him as that?

Q No, when he met and spoke to you, did he talk to you as Mike from Churchill's?

A Right.

Q Am I correct?

A I don't know if he stated the store, but Mike, he knew me as Mike.

1 Q Was there a formal introduction when you first
2
3 met Mr. Eisenberg whereby someone said "I want you to meet
4 Mr. Dubler, Michael Dubler"?

5 A No, sir.

6 Q As a matter of fact, when you spoke to him for
7 the first time it was on the telephone, am I correct?

8 A Yes, sir.

9 Q And you spoke to each other on a first name basis,
10 am I correct?

11 A Yes, sir.

12 Q And would it be fair to say that you didn't
13 even know his last name at that time; am I correct?

14 A Yes, sir.

15 Q Would it be fair to say that all during the
16 entire transactions that you had with Mr. Eisenber g you
17 didn't know his last name?

18 A Yes.

19 Q And it would be fair to say that he never called
20 you by your last name, am I correct?

21 A Yes, sir.

22 Q And it would be fair to say that he didn't
23 have your telephone number?

24 A Yes, sir.

25 MR. SPEISER: I object to that, your Honor.

THE COURT: Overruled.

Q Would it be fair to state that you never gave him your home address?

A Yes, sir.

Q You say you were introduced by a person by the name of Bernie, am I correct?

A Yes.

Q Who is Bernie?

A Bernie was a man connected with bookmaking.

Q Was he your bookmaker, sir?

A Yes.

Q Did you bet to him?

A Yes.

Q Was he one of several bookmakers that you had been gambling with?

A Yes.

MR. SPEISER: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

Q Is it not a fact, sir, that you were seeking a loan of money because of the trouble financially that you found yourself in with the bookmakers?

A Yes.

Q What was Bernie's last name at the time?

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Dubler-cross

46

A I didn't know it.

Q Isn't it a fact, sir, that Bernie personally introduced you to Mr. Eisenberg?

A No.

Q Isn't it a fact that Bernie, as you knew him then, said "I can't give you the money unless Bernie okays you"?

A No.

Q Well, did Mr. Eisenberg ask you to sign a note?

A No.

Q Did he ask you for your license or registration, any automobiles?

A No.

Q Did he ask where you live?

A No.

Q Did he ask you for any kind of security?

A He mentioned something about collateral.

Q Did you give him any?

A I had none.

Q Did you offer him anything?

A No, sir.

Q Didn't you have the best collateral at that time by the name, a fellow by the name of Bernie?

MR. SPEISER: Objection, your Honor.

THE COURT: That's a characterization. I will

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dhh Dubler-cross

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sustain that.

Q Is it not a fact, sir, that you told Mr. Eisenberg "Don't worry about it, I'm okay, Bernie recommended you to me" or vice versa?

A I told him -- I might have told him I was okay, yes, but I never said Bernie recommended me. He knew Bernie recommended me to him.

Q Bernie is the one who enlisted Mr. Eisenberg on your half?

A Yes, but I never used Bernie as a recommendation for me. He said I was okay. He just gave me the introduction.

Q Didn't Mr. Eisenberg say "The only reason I will loan you the money is because I know Bernie"?

A He might have at the time. I don't totally recall.

Q Can you recall approximately when you met and borrowed money for the first time from Mr. Eisenberg?

A You mean the date?

Q Yes.

A It was approximately three and a half years ago. I can't recall the exact date, no.

Q Would that be 1971 or 1972?

A It would be late '71 or '72, yes.

Q Do you remember approximately what time of the year it was in, by month or season?

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Dubler-cross

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A I would think it was fall.

Q At the time you first met, when was the next time that you first had a conference with him after he loaned you the money?

THE COURT: You can't have a next time when he first had something. Rephrase your question.

Q Some time in the fall of 1972, you met Mr. Eisenberg for the very first time, correct?

A Yes.

Q When did you thereafter speak to Mr. Eisenberg after that one instance?

A About five weeks later.

Q Going back to the first instance when you met Mr. Eisenberg, he didn't intimidate you or threaten you or frighten you on that time, did he?

A No, sir.

Q Five weeks later you spoke to him on the telephone; am I correct?

A Yes.

Q You say he cursed you out.

A Yes.

Q Am I correct?

A Yes.

Q And you agreed to pay what they call a miss

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Dubler-cross

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penalty; am I correct?

A Yes.

Q He didn't intimidate you, frighten you then, did he?

A Yes, sir, he did.

Q He did?

A Yes.

Q He scared you?

A Yes.

Q Did you go to the police, sir?

A No, sir.

Q Did you go to the FBI, sir?

A No.

Q Did you go to any U.S. Attorney's office to complain?

MR. SPEISER: Objection.

THE COURT: Overruled.

Q Did you, sir?

A No.

Q After you were threatened on the telephone, this fellow came to pick up the \$20, the miss penalty; am I correct?

A Yes.

Q Did you have a witness present --

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Dubler-cros.

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A No.

Q -- when the 20 was given to him?

A No.

Q Now, there came a time when you -- after the
phone call -- met Mr. Eisenberg in the store, Churchill's;
am I correct?

A Yes.

Q How much time elapsed from the telephone conversa-
tion where the \$20 penalty was discussed and the time
that you met Mr. Eisenberg in the store, Churchill's?

A Maybe a week.

Q And you testify that he cursed you out there?

A Yes.

Q Am I correct?

A Yes.

Q And you say he left the store; am I correct?

A Yes.

Q Do you remember what you testified on direct
examination? Do you not?

A Yes.

Q He didn't threaten you at that time, did he?

A In the store?

Q That's correct.

A He had.

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Q He did?

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A Yes.

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Q Did you call your boss over?

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A No.

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Q Did you call anybody over to say that a man

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just threatened you?

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A No.

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Q Did you call the police at that time?

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A No.

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Q Did you contact any authority in any manner or

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form at that time and complain that you were being threatened?

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A I was involved with an organization called Gamblers

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Anonymous and I discussed it with them. I had gone to them

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to -- for guidance.

16

Q This is after the store confrontation?

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A I spoke to them many times about him. I was going

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to Gamblers Anonymous at the time.

19

Q Now, sir, can you answer my question? Did you

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go to any of the authorities, law enforcement authorities,

21

and complain that you were being threatened by Mr. Eisenberg?

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A No.

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MR. SPEISER: Your Honor, he already answered that question.

24

25

THE COURT: He can answer it again.

2 A No.

3 THE COURT: Go ahead with the cross-examination.

4 Q Please, the judge is talking.

5 THE COURT: Don't repeat your questions. You
6 know, it doesn't add anything just to keep on asking the
7 same question all over again. If you get an answer, that
8 is it.

9 MR. WASHOR: I realize that.

10 Q Can you answer the question?

11 A No.

12 THE COURT: He's answered the question. Next
13 question.

14 Q You say after he cursed you out and walked out
15 of the store, he called you back on the telephone; am I
16 correct?

17 A Yes.

18 Q And he went through negotiations, am I correct,
19 relative to reducing the payments per month?

20 A Yes.

21 Q and he acquiesced or agreed to accept \$50 a month
22 instead of \$120 a month; am I correct?

23 A It was 120 a week.

24 Q I apologize.

25 A He agreed to accept it.

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Dubler-cross

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Q Instead of 120 a week, he agreed to accept 50 a month; am I correct?

A Yes.

Q In other words, from 120 to \$12 a week, approximately?

A Yes.

THE COURT: It is 12.50 a week.

Q Did he ever contact you at your home?

A No.

Q Did he ever ask for the names of any members of your family?

A No.

Q Did he ever send anybody down to talk to you about the repayment of money?

A No.

Q In sum and substance, Mr. Dubler, this man threatened you, am I correct? Did he or did he not threaten you?

A Yes, he did.

Q Okay.

You testified in the Grand Jury in November of 1973, didn't you?

A Yes.

Q November, 1973, in fact was closer in time to the

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dhh Dubler-cross 54
relationship you had to Mr. Eisenberg than it is today,
am I correct, sir?

A Yes.

Q And your memory relative to the incidents, is
it better today or was it better in November of 1973?

A It was better then.

Q I am going to change the line of questioning,
not to confuse you.

Sir, there there come a time that you left
the New York area?

A Yes.

Q When was that?

A Approximately two and a half years ago.

Q In relation to the last time that you had any
type of financial transaction with Mr. Eisenberg, when
did you leave the New York area?

A About a month after I made a payment, one payment--
a payment to him.

Q Is that the \$50 that we are talking about?

A That's correct, yes.

Q So that would be possibly winter of 1972, some
time there; am I correct, sir?

A It was in April.

Q April of 1972?

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Dubler-cross

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A I believe so.

Q And you went to Miami, am I correct?

A Yes.

Q How long were you out of the New York area,
approximately?

A Three months.

Q Did you come back?

A Yes.

Q Did you see Mr. Eisenberg after that?

A No.

Q Did you have a telephone conversation with Mr.
Eisenberg after that?

A No.

Q Did you see Bernie after that?

A No.

Q Did you see any bookmakers after that?

A No.

Q Would you say that Gamblers Anonymous was working
for you, sir?

A Yes.

Q By the way, you owed a lot of money before you
left town; am I correct?

A Yes.

Q And you didn't pay these people their full balances,

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Dubler-cross

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did you, sir?

A Not in full.

Q Did Mr. Eisenberg, after you came back after three months, did you speak to him on the telephone?

A No.

Q As a matter of fact, when you came back after three months, you went back to the very same place of business that you had first met Mr. Eisenberg, am I correct, Churchill's?

A Yes.

Q So that from the very same location in New York, am I correct, sir?

A No.

Q At a different store?

A Yes.

MR. SPEISER: Your Honor, I object to that.

THE COURT: Overruled.

Q You came back to work for Churchill's; am I correct?

A Yes.

Q Did Mr. Eisenberg meet or see you from the time that you came back to New York to the present time?

A No.

Q Did he contact you by phone from the time that you came back to New York to the present time, sir?

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Dubler-cross

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A No.

Q Did he, from the time that you came back to New York to the present time, ever attempt through his brother to get the balance of the money that you owe him?

A No.

Q Now, Mr. Dubler, returning to November of 1973, when you testified in the Grand Jury, when you testified you were under oath, am I correct?

A Yes.

Q This is November, 1973, am I correct?

A Yes.

Q And you had been back from Miami or Florida since June or July of 1972, am I correct?

A Yes.

Q A year, a year and a half had gone by when you were questioned about events relative to Mr. Eisenberg; correct?

A I believe so.

Q Approximately. I realize it is not exact.

A Okay.

Q And that same hiatus of time, a year, a year and a half, in no way, in nowise were you bothered by Mr. Eisenberg; am I correct?

A Yes.

THE COURT: Please don't keep repeating what we have heard. It doesn't add anything just to repeat.

Q When you testified in the Grand Jury you were advised of what constitutes perjury, am I correct?

A Yes.

Q Is it a fact, sir, that on November 14, 1973, that is the very date that you testified in the Grand Jury concerning these transactions?

A I don't know if that was the exact date.

MR. WASHOR: May I have a stipulation from the government?

MR. SPEISER: Yes. I stipulate to the fact that Mr. Dubler did testify on November 14, 1973.

Q Do you remember being asked these series of questions and giving these series of answers as reflected, Mr. Speiser, on page 10, starting on line 19:

"Q Isn't it a fact that he got extremely upset?

"A Yes.

"Q And this was a conversation over a phone?

"A Right.

"Q And didn't Benny threaten to shoot you over the phone?

"A No."

Do you remember being asked those questions and

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Dubler-cross

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giving those answers?

A Yes.

Q And was that the truth, sir?

A Yes.

Q Do you remember being asked the following series of questions and answers before the very same Grand Jury, on page 11: reflected on line 4.--line 2.

"Q You are sure that he didn't use the words, any words, to the extent --

"A The man was extremely excited and used the most violent language you can think of for a period of maybe five minutes on the phone. Now, I don't recall if he threatened to shoot me or not. No, I don't think so, no.

"Q Well, I am asking you specifically.

"A I don't think so. I don't know. You are asking me something I can't answer for you. I don't know whether he -- I told you the conversation was heated. It was over 18 months."

Do you remember being asked those series of questions and giving those answers, sir?

A Yes.

Q And is it the truth?

A Yes.

Q And is that the truth?

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Dubler-cross

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A That's the truth.

Q Have you ever had occasion where you misrepresented to any member of the Federal Bureau of Investigation?

A I don't understand the question.

Q Did you ever exaggerate or misrepresent to an FBI agent?

THE COURT: Which is it? Which is it? What are you talking about puffing or lying?

Q Did you ever puff, exaggerate, to an FBI agent?

A Not that I can recall.

Q Do you remember being asked these questions under oath in the very same Grand Jury of November 14, 1973, as reflected on page 11, the following question, the following answer, line 17:

"Q Do you recall telling the FBI during that conversation that Benny threatened to shoot you?

"A I don't recall that. At the time when I spoke to Young, this FBI agent, I was extremely upset. He happened to hit me right at this time and I might have exaggerated. I was very distraught about the whole thing. I don't think he threatened to shoot me."

Do you remember being asked those series of questions and giving those answers?

A I believe so, yes.

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Dubler-cross

61

Q Is that the truth, sir?

A Yes.

Q Now, from the time that you came back from Miami, to the very present day, is it not a fact that no one attempted to solicit your testimony favorable to Mr. Eisenberg?

MR. SPEISER: Objection, your Honor.

THE COURT: That calls for a conclusion.

Q Did anybody during the time you came back from Miami to the very present day, ever wipe out your debt to Mr. Eisenberg?

A No.

Q Did anybody say "You don't owe him any money, don't worry about it"?

A No.

Q Did anybody tell you that you could earn some money if you testified favorably in the Grand Jury on behalf of Mr. Eisenberg?

A No.

Q Would it be fair to state that you have not been coerced or bribed to help or hurt Mr. Eisenberg when you testified in the Grand Jury on November 14, 1973?

A That's correct.

Q And that was truthful statements that you gave

1 dhh Dubler-cross 62

2 at that Grand Jury, sir, correct?

3 A Yes.

4 Q Do you remember the following series of questions
5 before the Grand Jury, and the following series of answers
6 given by you under oath on November 14, 1973, on page 15,
7 Mr. Speiser.

8 MR. SPEISER: Your Honor, if I may make one
9 point, just for the record, Mr. --

10 MR. WASHOR: Your Honor, I object to any statement
11 in the presence of the jury.

12 THE COURT: Wasn't the Grand Jury transcript
13 put in evidence?

14 MR. SPEISER: Not of Mr. Dubler's. The only
15 Grand Jury transcript that is in evidence is the transcript
16 of Mr. Eisenberg.

17 THE COURT: That's a technical omission. He is
18 asking him now questions about what testimony he gave
19 presumably supposing to contradict something he said. But
20 I'm still waiting to hear the contradiction.

21 MR. WASHOR: Your Honor, I object to that comment
22 by the court.

23 THE COURT: I am not commenting. I am merely
24 saying you are using a document not in evidence.

25 MR. WASHOR: Your Honor, I know that.

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Dubler-cross

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THE COURT: For cross-examination on a subject that was not treated in his direct testimony, and, therefore, you are using it as affirmative evidence.

MR. WASHOR: Your Honor, he testified on direct that this man threatened him.

THE COURT: Yes, that's right. Did he talk about a gun on his direct examination?

MR. WASHOR: He talks about threats. I am getting to that, Judge.

THE COURT: I know, get there quickly.

MR. WASHOR: Surely.

Q On page 15, as reflected in the following questions and answers. Do you recall being asked these questions and giving these answers, line 19:

"Q Do you recall him coming into the store to speak with you with respect to the money that you were behind in your payments?

"A Yes, yes, right.

"Q Isn't it a fact that he became extremely irate?

"A Yes.

"Q And didn't he make threats to kill you?

"A No.

"Q You are positive of that?

"A I'm not positive, I don't recall mkaing threats

to kill me. I recall that all the man did was curse and make a fist and say I ought to take care of you right now, I ought to rap you, something like that. He always made a fist like he was holding it back."

Do you remember those questions and those answers?

A Yes.

Q And were they truthfully answered, sir?

A Yes, sir.

MR. WASHOR: I ask the Court's indulgence for one moment, please.

At this time may I get a stipulation that--

THE COURT: Please, if you want to stipulate, you just walk over there and have a conversation out of the hearing of everybody and if you get it, you get it. And if you don't get it, don't talk about it.

MR. WASHOR: Sure.

(Counsel confer.)

MR. WASHOR: Your Honor, with the Court's permission, may I just read a question and answer back to the witness to correct a reading mistake by myself?

THE COURT: Go ahead.

Q Do you remember the following question and the following answer before this Grand Jury:

"Q You're positive of that?

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Dubler-cross
redirect

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A I'm not positive. I don't recall making threats to kill me. I recall that all the man did was curse and make a fist and say I ought to take care of you right now. I ought to rap you now, something like that. He always made a fist like he was holding it back, but I don't recall him saying he would kill me. He once said someone will come down and see you."

Do you remember that question and answer, sir?

A Yes.

Q Was that the truth?

A Yes.

MR. WASHOR: With the Court's permission, the government counsel will stipulate that I have been reading from the extract of Grand Jury minutes of this witness under oath. That testimony having been perpetuated on November 14, 1973, and that that form that I am reading is an accurate transcription of those Grand Jury minutes, and that I have read accurately.

THE COURT: Does that conclude your examination?

MR. WASHOR: Yes, sir.

THE COURT: All right. Any redirect?

MR. SPEISER: Just a few questions, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

1 dhh Dubler-redirect 66

2 BY MR. SPEISER: Aronowitz-direct

3 Q Mr. Dubler, when you testified, you testified
4 you left the New York City area and went to Miami. Did you
5 at that time contact Mr. Eisenberg and tell him that you
6 were leaving New York?

7 A No.

8 Q When you came back from Miami to New York,
9 as you testified, did you contact Mr. Eisenberg and tell
10 him you were back from New York?

11 A No.

12 Q When you returned to New York from Miami, did you
13 contact Bernie and tell him you were back?

14 A No.

15 MR. SPEISER: I have no questions.

16 THE COURT: All right. You may step down.

17 (Witness excused.)

18 THE COURT: Next witness.

19 MR. SPEISER: The government will call Robert
20 Aronowitz as its next witness.

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22 R O B E R T A R O N O W I T Z, called as a witness,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SPEISER:

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Aronowitz-direct

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Q Mr. Aronowitz, I am going to ask you to speak loud and slowly so that the members of the jury can hear what you have to say.

Mr. Aronowitz, how are you employed?

A Self.

Q Mr. Aronowitz, do you know an individual by the name of Benjamin Eisenberg?

A Yes, sir.

Q Do you see Benjamin Eisenberg here today?

A Yes, sir.

Q Would you please point him out?

A Right over there.

Q Mr. Aronowitz, have you ever had the occasion to meet with the defendant Benjamin Eisenberg?

A Yes, sir.

Q Do you recall when that meeting first took place?

A About eight years ago.

Q Mr. Aronowitz, have you ever been convicted of a crime before?

A Yes.

Q Do you recall what crime that was?

A Bribery.

Q When did that conviction take place?

A April of '73.

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Q Did you plead guilty?

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A Yes.

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Q Is that when you pled guilty?

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A Yes.

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Q Did you receive a sentence when you were sentenced?

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A Yes.

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Q What was that sentence?

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A 18 months suspended sentence.

10

Q Were you placed on probation?

11

A Yes, sir, for 18 months.

12

Q Mr. Aronowitz, were you ever told that in

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connection with that crime for which you were indicted--

14

MR. WASHOR: Objection.

15

THE COURT: You have jumped the gun. Wait a

16

minute. Go ahead.

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Q Mr. Aronowitz, were you ever told, in connection

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with that crime for which you were indicted, that if you

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cooperated with the government your cooperation would be

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made known to the court?

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THE COURT: Is this in connection with the bribery

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case?

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MR. SPEISER: Yes, your Honor.

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MR. WASHOR: I withdraw the objection.

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Q Would you answer that question, please.

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Aronowitz-direct

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A Yes.

Q Did you in fact cooperate with the government?

A Yes.

Q Mr. Aronowitz, did you ever receive any money from the government?

A Yes.

Q How much money did you receive?

A \$400.

Q From whom did you receive that money?

A From the FBI.

Q Do you recall when you received that money?

A I believe it was in March of '73.

Q What was that information paid to you for?

MR. WASHOR: Objection.

MR. SPEISER: Excuse me. I apologize.

THE COURT: What was the money paid for?

Q What was the money paid for?

A For traveling and for food.

Q Was that the only occasion that you ever received any money from the government?

A Yes, sir.

Q Mr. Aronowitz, how did you first meet the defendant Benjamin Eisenberg?

A I met him through a party, through some man.

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Aronowitz-direct

70

Q What was this man's name?

A Phil.

Q Did Phil personally introduce you to Mr. Eisenberg?

A No. Mr. Eisenberg called me on the telephone.

Q Where did Mr. Eisenberg call you on the telephone?

A At my place of business.

Q Where was your place of business located at that time?

A On West 38th Street in Manhattan.

Q What type of business were you engaged in at that time?

A Dress cutting, contracting.

Q Were you the owner of the business?

A Yes, sir.

Q Did Mr. Eisenberg tell you how he got your phone number?

A Well, I presumed he got it from --

MR. WASHOR: Objection.

THE COURT: Don't presume. Did he tell you how he got your number?

THE WITNESS: He got it from this fellow that--

MR. WASHOR: Objection.

THE COURT: The question is, did he tell you how he got it.

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Aronowitz-direct

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THE WITNESS: Yes, through that party.

THE COURT: Is this what he said?

THE WITNESS: Yes.

THE COURT: All right. Go ahead. The party being
Phil.

THE WITNESS: That's right.

Q When Mr. Eisenberg contacted you, on the
telephone, did you have a conversation with him at that
time?

A Well, I told him -- I asked him, I needed some
money and he didn't want to talk on the telephone, and
he said he'd get back to me.

Q Was that all that was said in that conversation
between you and Mr. Eisenberg?

A Yes.

Q Did Mr. Eisenberg in fact subsequently get back
in touch with you?

A Yes, he did.

Q How soon afterwards?

A A few days later.

Q How did he get in touch with you?

A Well, he called me and I gave him my address
and he came up to my place.

Q Did he come up to your place the same day he

1
2 called you?

3 A I believe it was a day later.

4 Q Did he come up to your place alone?

5 A Yes.

6 Q You stated your place was located on West 38th
7 Street?

8 A Yes, sir.

9 Q Is it on the street level?

10 A No, it was on the third floor.

11 Q Were you in when Mr. Eisenberg came up to your
12 place?

13 A Yes.

14 MR. WASHOR: Objection.

15 THE COURT: Overruled.

16 MR. WASHOR: I apologize for not standing.

17 THE COURT: Go ahead. Next question.

18 Q Did you have a conversation with Mr. Eisenberg
19 at your place of business at that time?

20 A Yes.

21 Q Do you recall at this time what was discussed
22 between you and Mr. Eisenberg?

23 A Well, it was a discussion about money. I needed
24 some money.

25 Q Did you tell him what you needed that money for?

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Aronowitz-direct

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A Yes.

Q What did you tell him?

A I needed the money for my business, for machinery and to fix up the place.

Q Did you tell him how much money you needed?

A Yes.

Q How much did you tell him you needed?

A \$30,000.

Q What, if anything, did Mr. Eisenberg say after you told him you needed \$30,000?

A He said -- we talked about it, and he said what it would cost me and he would get back to me.

Q Did Mr. Eisenberg --

THE COURT: What did he say it would cost you?

THE WITNESS: \$600 a week.

THE COURT: For how many weeks?

THE WITNESS: It wasn't for weeks. Until I paid up the \$30,000 in one time.

THE COURT: In other words, it was \$600 a week plus \$30,000?

THE WITNESS: In other words, when I finished, if I gave him \$30,000 plus 600, that would be \$30,000 and 600, and I'd be finished.

THE COURT: If you paid up in one week.

THE COURT: Yes. And if you took two weeks?

THE WITNESS: I'd be paying \$600 each week.

THE COURT: Then you had to pay the \$30,000 anyhow?

THE WITNESS: That's right.

Q So Mr. Eisenberg didn't tell you that there was any definite time limit for the loan?

A No.

Q Mr. Eisenberg didn't tell you that you had to repay the loan at a certain point in time?

A No.

Q Did Mr. Eisenberg tell you what this \$600 was to be treated as?

A Interest.

Q He did say it was to be treated as interest?

A Right.

Q Did Mr. Eisenberg give you the \$30,000 at that time?

A No, not at that time.

Q How long did that conversation take place?

A About 15, 20 minutes.

Q Did anyone else at your shop overhear that conversation?

A No.

Q Did Mr. Eisenberg subsequent to that meeting at

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Aronowitz-direct

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your shop ever get back to you again?

A Yes. A few days ' er.

Q Did he telephone you or come to your place again?

A No, he called me up and told me to meet him.

Q Where did he tell you to meet him?

A I met him on 37th Street and near Seventh Avenue,
on Seventh Avenue. 38th Street and Seventh Avenue, I
believe it was.

Q Did Mr. Eisenberg state to you that there would
be somebody with him?

A No, he was alone.

Q Did he state that he was going to be with somebody?

A No.

Q Did you in fact go to this address and meet Mr.
Eisenberg?

A I did.

Q Did you go there alone?

A Yes, sir.

Q Was Mr. Eisenberg there when you arrived?

A Yes, sir.

Q Did you have a conversation with Mr. Eisenberg
at that time?

A No.

Q Prior to that, to your leaving to go to meet Mr.

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Aronowitz-direct

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Eisenberg at that address, during that telephone conversation that you had with Mr. Eisenberg, did he tell you why he wanted to meet you?

A Yes, he had the money for me.

Q When you met Mr. Eisenberg at that address, did Mr. Eisenberg give you anything?

A Yes.

Q What did he give you?

A He gave me an envelope.

Q Did you have any conversation with Mr. Eisenberg at that time?

A No.

Q Were there people walking around at that time?

A Yes.

Q Did anybody else talk with you or Mr. Eisenberg at that time?

A No.

Q Did you open the envelope at that time?

A No.

Q Did you ever open up the envelope?

A When I got back to my place of business.

Q That same day?

A That's right.

Q What was inside the envelope when you opened it up?

1 dhh Aronowitz-direct 77

2 A \$30,000 in hundred dollar bills.

3 Q Did you count this money yourself?

4 A Yes.

5 Q What did you do with this money?

6 A I held it on my own personal self.

7 Q Did Mr. Eisenberg indicate to you --

8 MR. WASHOR: Objection.

9 MR. SPEISER: I will rephrase that question.

10 Q Subsequent to Mr. Eisenberg handing you this

11 envelope, did you ever have another conversation with

12 Benjamin Eisenberg?

13 A I didn't get that question.

14 THE COURT: He wants to know, after you got the

15 money, did you talk to the man again?

16 A Oh, yes, yes. Yes, sure I did.

17 Q Do you recall if Mr. Eisenberg called you up

18 shortly after he gave you that \$30,000?

19 A About a day later.

20 Q What did he say, if anything, to you in that

21 conversation?

22 A Well, he'll be up to collect the money.

23 Q Did Mr. Eisenberg in fact come up to collect

24 the money?

25 A Yes.

1
2 Q Did Mr. Eisenberg make you sign a note for this
3 money?

4 A A few days later he called me up.

5 Q A few days after when?

6 A After I received the money.

7 Q Go ahead.

8 A And he called me, he called me up and he says
9 he wanted me to sign a note for it.

10 Q Did he indicate to you what was going to be
11 contained on that note?

12 A No.

13 Q Did he tell you where you were to meet him to
14 sign that note?

15 A I met him in the same place.

16 Q Being where?

17 A On Seventh Avenue and 38th Street.

18 Q Was there anyone else present at that time?

19 A No.

20 Q What, if anything, did you do when you met Mr.
21 Eisenberg at that place?

22 A Well, I signed the note.

23 Q Was this on the street or in a car?

24 A I believe there was a bank right near there,
25 and I went into the bank to sign it.

Q Did Mr. Eisenberg sign the note with you?

A No. I just put my signature on. It was a regular standard form, you know, like a promissory note.

Q Did you read it over?

A No, because it was just \$30,000 on there and I signed my name to it.

Q Did Mr. Eisenberg sign that?

A Not that I know of.

Q Did you take the note?

A No.

Q Did Mr. Eisenberg take the note?

A Yes.

Q Did you ever receive a copy of that note on which you signed your signature indicating you were to pay Mr. Eisenberg \$30,000?

A No.

Q Let me ask you, Mr. Aronowitz, did you sign this note prior to making your first payment of \$600 to Mr. Eisenberg?

A I think it was after the first payment.

Q Did Mr. Eisenberg, the defendant, Benjamin Eisenberg, himself come and collect the \$600 from you that first payment?

A Yes.

Q Subsequent to that first collection of \$600, did

1 dhh
2 Mr. Eisenberg, the defendant, Benjamin Eisenberg, ever
3 again come to your place of business at West 38th Street
4 to collect that money?

5 A I think one more time he came.

6 Q How long after you incurred that loan from
7 Mr. Eisenberg of \$30,000 did you remain at that address
8 at West 38th Street?

9 A Well, I was there about four years, about four
10 years.

11 Q And did anybody else come to collect the \$600
12 from you other than the defendant Benjamin Eisenberg?

13 A Yes, his brother.

14 Q How did you know it was his brother?

15 A He called and he told me his brother would come up.

16 Q How often did his brother come up?

17 A Every week.

18 Q Did he come on a particular day?

19 A Usually on a Friday.

20 Q Do you recall what his brother's name was?

21 A Phil.

22 Q Did he tell you his name was Phil?

23 A Yes.

24 Q What would you do every week when the defendant
25 Benjamin Eisenberg's brother Phil came up to see you?

1 dhh Aronowitz-direct 81

2 A I would give him the money.

3 Q Would you give it to him in cash?

4 A Cash.

5 THE COURT: What money?

6 THE WITNESS: \$600.

7 Q Except for the times that you have indicated

8 the defendant Benjamin Eisenberg came and collected the

9 money from you, was the only person that ever came

10 to collect the \$600 from you the defendant Benjamin

11 Eisenberg, Phil Eisenberg?

12 A That's right.

13 Q And this happened every week?

14 A Right.

15 Q Over a four-year period?

16 A Right.

17 Q So how much did you pay Mr. Eisenberg came on

18 this \$30,000 loan over this four-year period?

19 A Over \$125,000.

20 Q Now, Mr. Aronwotiz, how come after you paid him,

21 paid Mr. Eisenberg or his brother, enough \$600 payments you --

22 that would have --

23 MR. WASHOR: Objection.

24 THE COURT: You better rephrase the question.

25 Q Mr. Aronowitz, did there come a time when in your

mind you knew that you had paid Mr. Eisenberg enough \$600² payments that equalled \$30,000?

A Yes.

MR. WASHOR: Objection.

THE COURT: The form of the question is bad.

Did the total of the \$600 that you paid come to \$30,000 at some time?

THE WITNESS: Yes.

THE COURT: So that means that you paid him 50 times?

THE WITNESS: Yes.

THE COURT: And that was all in one year?

THE WITNESS: No, in the period of four years.

THE COURT: In four years?

THE WITNESS: Yes.

THE COURT: Did it exceed the \$30,000 or was it just 30,000 on the nose?

THE WITNESS: I don't understand.

THE COURT: Did you give him 50 payments or more or less?

THE WITNESS: I paid him for four years, every Friday.

THE COURT: Yes? And every Friday every year?

THE WITNESS: Yes.

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Aronowitz-direct

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THE COURT: Well, there are 52 weeks in a year; is that right?

THE WITNESS: Yes.

THE COURT: And 52 times \$600 would be \$31,200 in one year.

THE WITNESS: Yes.

THE COURT: And did you do that for four years straight?

THE WITNESS: Yes.

THE COURT: In other words, you paid him four times \$31,200?

THE WITNESS: Right.

THE COURT: For this \$30,000 loan?

THE WITNESS: Right.

THE COURT: And at the end of it you owed him \$30,000?

THE WITNESS: That's right.

THE COURT: We will take a short recess.

(Recess)

(Jury present.)

BY MR. SPEISER:

Q Mr. Aronowitz, during this four-year period did you ever not pay Mr. Eisenberg \$600?

A A few times.

1 dhh Aronowitz-direct 84
2 Q During that week, Mr. Eisenberg or his brother
3 Phil?
4 A Yes.
5 Q Did Mr. Eisenberg ever say anything to you during
6 that four-year period when you didn't pay him that \$600
7 for a week?
8 A Well, he wanted to know why, and I told him
9 there was no business, it was slow.
10 Q Do you recall the tone of that conversation?
11 MR. WASHOR: Objection.
12 THE COURT: Do you recall the conversation
13 and the manner in which it was conducted?
14 A Well, he didn't like the idea, but --
15 MR. WASHOR: Objection.
16 THE COURT: What did he say? You have to try
17 to put us into the picture so we understand what was going
18 on and we will draw the idea whether he liked it or didn't
19 like it. What did he say or what did he do?
20 A He wanted to know why and I told him there
21 was no business and that was it. I didn't have no business
22 for the week.
23 Q Is that the only question or statement that
24 Mr. Eisenberg made to you during that period?
25 A At that time, yes.

1 Q Mr. Aronowitz, after one year had passed and
2 you had paid \$600 every week say for those weeks that
3 you have testified you didn't pay him, did you know
4 in your own mind that you had paid him in excess of \$30,000?
5

6 A Yes.

7 Q Why did you continue to pay him \$600 a week in
8 excess of that \$30,000?

9 MR. WASHOR: Objection.

10 MR. SPEISER: Should I rephrase that?

11 THE COURT: No, we will leave that for cross-
12 examination. You may ask it in that form.

13 Q Mr. Aronowitz, what happened after this four-
14 year period, did you --

15 THE COURT: Stop there. What happened after the
16 four-year period.

17 A Well, business went bad and I moved out of that
18 building and I couldn't afford to pay any more.

19 Q Where did you move to, Mr. Aronowitz?

20 A West 37th Street.

21 Q What did you do at West 37th Street?

22 A Well, I had a much smaller operation.

23 Q Were you still in the same business?

24 A The same business, yes.

25 Q And that business was what?

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Aronowitz-direct

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A Contract and cutting dresses.

Q When you moved to West 37th Street, did you ever have the occasion to meet with Mr. Eisenberg again?

A Yes.

Q The defendant Benjamin Eisenberg?

A Right.

Q Where did you meet with the defendant Benjamin Eisenberg?

A At my place of business.

Q What did Mr. Eisenberg say to you, if anything, when he came to your place of business?

A Well, he was yelling, a very foul mouth and he yelled he wanted his fucken money and I says "I can't make those payments any more."

Q Did he say that more than once?

A A couple of times.

Q During that same conversation?

A That's right.

Q Did you tell Mr. Eisenberg that you had moved from West 38th Street?

A When he found out --

MR. WASHOR: Objection.

THE COURT: He just wants to know were you the one who told him that you moved.

THE WITNESS: No.

Q Did Mr. Eisenberg, the defendant Benjamin Eisenberg, tell you how he found out you moved to West 37th Street?

A No.

Q What, if anything, did Mr. Eisenberg say to you when you told him you couldn't continue paying the \$600 weekly payments?

A Well, I made a deal with him, I would try and give him 50 to \$75 a week.

Q What did Mr. Eisenberg say when you told him that?

A He didn't like the idea, but that's all I was able to pay.

Q But did he say anything when you told him that was all you were able to pay?

A He was yelling and screaming and I said that's all I could pay.

Q Did Mr. Eisenberg indicate to you that he would accept 50 to \$75 a week?

A Yes.

Q Did you in fact ever pay the defendant Benjamin Eisenberg while you were at West 37th Street amounts between 50 and \$75?

A I did.

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Aronowitz-direct

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Q Do you recall on how many occasions?

A For a few months.

Q Was this a weekly payment?

A Yes.

Q Did you always make that payment to the defendant Benjamin Eisenberg?

A No, to his brother.

Q On some occasions, then, you made it to the defendant Benjamin Eisenberg and on other occasions you made it to his brother Phil Eisenberg?

A Right.

Q Were were these payments made?

A At my place of business.

Q At west 37th Street?

A Yes, sir.

Q Were were all these \$600 payments made?

A In my place of business.

Q Did you ever contact Mr. Eisenberg and tell him that you would meet him to pay him at a bar?

A No.

Q Did you ever contact Mr. Eisenberg and tell him that you would meet him somewhere on a street and pay him \$600?

A No.

Q Did Mr. Eisenberg ever ask you, that is, the defendant Benjamin Eisenberg, did he ever ask you to meet him on a street or meet him on a street to pay him \$600?

A No, sir.

Q Did he ever ask you to meet him at a bar and pay him \$600?

A No, sir.

Q Did you ever during the period that you paid Mr. Eisenberg \$600 and the period that you paid him amounts varying between 50 and \$75 ever call the defendant Benjamin Eisenberg and tell him that you wanted to pay him money?

A No. Not to pay him money, no.

Q Did you ever have the defendant Benjamin Eisenberg's telephone number?

A I did.

Q Did the defendant Benjamin Eisenberg ever give you his telephone number?

A Yes.

Q And you called him on occasions at his--

A Yes.

MR. WASHOR: Objection.

THE COURT: Finish your question.

Q Do you recall how many occasions you called the

defendant Benjamin Eisenberg?

A A few times.

Q Was the phone number you had for Benjamin Eisenberg's home phone number?

A Yes.

Q Did you ever have any other phone number for the defendant Benjamin Eisenberg?

A No, sir.

Q You have testified that you paid the defendant Benjamin Eisenberg and his brother Phil Eisenberg amounts between 50 and \$75 for a few month period?

A Right.

Q How many months was that, do you recall?

A About three months.

Q What happened at that point, after you stopped paying him 50 to \$75?

A Well, I had to close down that place on 37th Street, and I moved to a much smaller place on 36th Stteet.

Q Did you tell Mr. Eisenberg, the defendant, Benjamin Eisenberg, that you were moving to West 36th Street?

A I don't remember.

Q Did the defendant Benjamin Eisenberg ever come to see you at West 36th Street?

A I don't think he came. I think his brother came

Q Did you ever tell his brother that you had moved to West 36th Street?

A I don't remember.

Q Did you ever have a conversation with his brother when he came to West 36th Street?

A Yes.

Q Did you ever mention in that conversation with Mr. Eisenberg's brother payment of moneys?

A On 36th Street?

Q Yes.

A I said "All I could give you is \$25 a week."

Q Did you in fact ever give the defendant Benjamin Eisenberg's brother \$25 a week?

A Yes, for a few weeks.

Q How come you only paid him for a few weeks?

A Because I had to pay the place. The marshals closed the place down and I had to go out of business.

Q Did you tell the defendant Benjamin Eisenberg that you were going out of business?

A No.

Q Do you recall when you went out of business at West 36th Street?

A It is over -- about over a year and a half ago, it must be.

Q After you went out of business at West 36th Street, did you ever have any further contact with Phil Eisenberg?

A No.

Q Did you ever have any further contact with the defendant Benjamin Eisenberg?

A Yes.

Q Do you recall when that contact took place?

A I met him --

Q Do you recall when it took place?

A About a year ago.

Q Do you recall where it took place?

A I met him -- I bunked into him on Seventh Avenue.

Q Was this a planned, scheduled meeting?

A No. I just bunked into him in the street.

Q Where was that again?

A On Seventh Avenue and 38th Street.

Q Did you have a conversation with Mr. Eisenberg at that time?

A Well, he wanted to know what I was doing and said "I'm going to try and go back in business."

Q Did Mr. Eisenberg respond to that statement?

A No.

Q After you told Mr. Eisenberg that you were going back into business, you don't recall Mr. Eisenberg

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Aronowitz-direct

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ever saying anything to you after that?

A I said I'll be in touch with him.

Q He said that to you or you said that to him?

A I said it to him.

Q Did Mr. Eisenberg have your home phone number?

A No.

Q Did he ever call you at home?

A No.

Q Was your home telephone number at that time listed?

A No.

MR. WASHOR: Objection.

THE COURT: Overruled.

Q Mr. Aronowitz, in any conversations that you had with the defendant Benjamin Eisenberg, did you ever use the name Jack to identify yourself?

A No.

Q How did you identify yourself whenever you had conversations with Benjamin Eisenberg?

A Bob.

Q Did you ever tell Benjamin Eisenberg your last name?

A Yes.

Q When was that?

A When I met him and when I signed the note he saw

1 dhh Aronowitz-direct

2 my last name on it.

3 Q Mr. Aronowitz, did you ever borrow any other money
4 other than this \$30,000 from the defendant Benjamin Eisenberg?

5 A Yes.

6 Q Do you recall when that loan occurred?

7 A Well, it was about a few years after I borrowed
8 \$7,000.

9 Q Where did the discussions surrounding that
10 borrowing of an additional \$7,000 take place?

11 A In my place of business.

12 Q Where were you located at that time?

13 A 38th Street.

14 Q Did you ask the defendant Benjamin Eisenberg
15 for \$7,000?

16 A That's right.

17 Q What did he say?

18 A He gave it to me.

19 Q What did he say?

20 A Well, I told him I needed it for a business.

21 MR. WASHOR: Objection.

22 THE COURT: Overruled.

23 What did he say?

24 THE WITNESS: Can I talk, your Honor?

25 THE COURT: Yes.

THE WITNESS: I said I need it for a dress business up in Rockland County. And he gave me the money.

Q Was this a business that you owned?

A Well, I opened a dress shop up there.

Q Did you use this money for that business?

A That's right.

Q Did you ever repay the defendant Benjamin Eisenberg that \$7,000?

A No.

Q Why did you not ever repay him the \$7,000?

MR. WASHOR: Objection.

THE COURT: I don't think it is important why he didn't. The objection is sustained.

What were the terms of that loan?

THE WITNESS: There was no terms on it.

THE COURT: Did you sign a note?

THE WITNESS: No, sir.

THE COURT: How did you get the money?

THE WITNESS: He gave me the cash.

THE COURT: Where did you get the cash?

THE WITNESS: In my place of business.

THE COURT: In what denominations?

THE WITNESS: Hundred dollar bills.

Q Did you get this money the same day that you

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cross

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asked him for the money?

A A few days after.

THE COURT: How many years had the first loan been going by the time you got the \$7,000?

THE WITNESS: I believe about two years.

Q Mr. Aronowitz, when you told Mr. Eisenberg, when you were at West 36th Street, that you were unable to pay him \$25 any more, did Mr. Eisenberg say anything to you?

A I didn't tell it to Mr. Eisenberg because I didn't see Mr. Eisenberg, I saw his brother.

THE COURT: He wants to know what the brother said when you told him that.

THE WITNESS: He didn't say nothing, the brother.

MR. SPEISER: I have no further questions.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. WASHOR:

Q November of 1973 you were indicted in this district for the crime of bribery, which you testified you pled guilty to; am I correct, sir?

A That's right.

MR. SPEISER: Your Honor, I object to that.
It wasn't November --

1 THE COURT: Please.

2 MR. SPEISER: I wanted to characterize the
3 exact date.
4

5 THE COURT: The witness will take care of it.
6 And if he doesn't, you will do it on redirect examination.

7 Q November of 1971 is the time that you were
8 indicted for the crime of bribery that you testified
9 that you pled guilty to; am I correct, sir?

10 A Yes.

11 Q When did you borrow the \$30,000 from Mr. Eisenberg
12 that you testified to?

13 A About eight years ago.

14 Q Eight years from today?

15 A Yes.

16 Q In 1964?

17 A Yes.

18 THE COURT: Eight years, is that 1964?

19 MR. WASHOR: I didn't mean '64, Judge. I'm sorry.

20 THE COURT: That's what you said.

21 Q 1967 or '68, am I correct, sir?

22 A Yes.

23 Q At the time that you were indicted for the
24 crime of bribery that you pled guilty to, were you still
25 paying Mr. Eisenberg 600 a week?

1 dhh

Aronowitz-cross

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2 A Yes, I was paying him that money, too. He didn't
3 wnat to know from nothing, he wanted his money.

4 Q But you were paying him?

5 A My shop was still running.

6 Q Do you remember when you stopped paying 600 a
7 week, the year?

8 A Not offhand.

9 Q Do you remember the year?

10 A I paid him for four years.

11 Q Until approximately 1972, would that be reasonable,
12 approximate time?

13 A Right.

14 Q That you stopped paying him the 600 a week?

15 A Yes.

16 Q You pled guilty in April of 1973 to the crime
17 of bribery that you testified to on direct examination;
18 am I correct?

19 A Yes.

20 Q Isn't it a fact, sir, that you came forward
21 and discussed with certain agents the fact that he loaned
22 you money; am I correct, before you were sentenced in
23 April of 1973?

24 A Not that I recall.

25 MR. SPEISER: If Mr. Washor can identify with whom

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Aronowitz-cross

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he is supposed to have had these discussions.

THE COURT: Mr. Speiser, will you please wait your turn?

Q Sir, didn't you --

THE COURT: If you have a legal objection, make it. But when the lawyer makes a mistake, that is no cause for you to jump up.

Q Sir, didn't you make a kind of a deal with the government or in relation to the bribery case?

A I made a deal? I didn't make any deal with them.

Q Didn't you sit with the U.S. Attorney, the lawyer, and work out a fact that if you cooperated your cooperation would be brought to the attention of the judge when you were sentenced?

A Yes, that -- they didn't guarantee me anything.

Q But they said they would bring all the cooperation to the judge's attention on the date of sentence?

A Right.

Q Correct? And you didn't go to jail, did you?

A No.

Q You got 18 months suspended sentence and probation, am I correct?

A That's right.

Q And you had cooperated up to that point; am I

1 dhh Aronowitz-cross 100
2 correct?
3 A That's right.
4 Q By the way, this bribery, how much money did the
5 bribery involve?
6 A \$1,500.
7 Q Was it given to a public official, sir?
8 A To the IRS.
9 Q And it had to do with income tax, am I correct?
10 A That's right.
11 Q An audit of yours, am I correct?
12 A That's right.
13 Q You borrowed this \$30,000 approximately in 1967,
14 1968 --
15 THE COURT: Please don't backtrack, will you?
16 It is getting late in the afternoon. We don't have to hear
17 the same date over and over and over again.
18 Q When you borrowed the \$30,000, as you have testified,
19 you were in business, am I correct?
20 A I was in business.
21 Q What was the nature of your business?
22 A Dress cutting.
23 Q How many employees did you have?
24 A It varied. If it was busy, I had more employees.
25 If it was slow, I had less employees.

1 dhh Aronowitz-cross 101

2 Q Did you file income tax for the year that you
3 borrowed the \$30,000?

4 A I filed every year.

5 Q How much did you report the first year after
6 you borrowed the \$30,000?

7 MR. SPEISER: Objection.

8 THE COURT: Sustained.

9 Q How much income from your business did you make,
10 sir, the first year after you borrowed the \$30,000?

11 A I don't remember, my accountant took care of all
12 of that.

13 Q You had an accountant; am I correct?

14 A That's right.

15 Q Did you also have an attorney?

16 A That's right.

17 Q Did you go with them when you signed a note for
18 \$30,000?

19 A No.

20 Q Did you get a copy of the note?

21 A No.

22 Q At the time that Mr. Eisenberg allegedly
23 gave you \$30,000, did you ask him for a copy of the note?

24 A No.

25 Q When he gave you the \$30,000, you had not known him

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Aronowitz-cross

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before that time, am I correct?

A No.

Q You had no dealings with him before that time,
am I correct?

A I never met him before.

Q Did Mr. Eisenberg, when he gave you the \$30,000,
ask you to take a life insurance policy out?

A No.

Q To protect the loan?

A No.

Q Did he ask for collateral, sir?

A No.

Q Did you tell him this was your business and
you needed the money for the business?

A Yes.

Q Did you tell him that you were the sole owner
of the business?

A That's right.

Q Did he ask for any shares of stock in the business?

A No.

Q Did Mr. Eisenberg try to do anything at the
time he gave you the \$30,000 to protect that very \$30,000?

A Well, I asked him to try and get me some business,
he never got it for me.

1 Q Now, sir, did Mr. Eisenberg ask you for
2
3 any document that would protect him for the \$30,000
4 that he gave you?

5 A No.

6 Q Do you remember what your payroll was the
7 first year after you got the \$30,000?

8 A I don't remember.

9 Q Can you give me an approximation?

10 A I have no idea.

11 Q Where were you living at that time? I'm talking
12 about within the year following the \$30,000. Where did
13 you live?

14 A What year was that?

15 Q 1967 or '68.

16 A I lived in Brooklyn.

17 Q Did you have an automobile?

18 A Yes.

19 Q Do you remember--

20 A I had quite a bit -- bit of automobiles, I don't
21 remember what type it was.

22 MR. SPEISER: Objection.

23 Q Didn't you have a Cadillac, sir?

24 A At one time.

25 Q In 1967-68, did you have a new car every two years?

1 dhr Aronowitz-cross 104

2 A Almost.

3 Q And it was the big cars, in the Cadillac price

4 range?

5 A No.

6 MR. SPEISER: Objection, your Honor.

7 THE COURT: Overruled.

8 A No.

9 Q Did you ever have the small Chevy during that

10 period of time?

11 A I had a Buick.

12 Q Are you married, sir?

13 A Yes.

14 Q Do you have children?

15 A Yes.

16 Q What was the approximate ages of your children

17 at that four-year period of time without their names?

18 THE COURT: I don't think you need that. Go

19 on to something else.

20 Q Did you send your children to camp?

21 THE COURT: I don't think we need that, either.

22 Q Sir, where did you get \$600 a week if your

23 business was failing for the first year to pay in cash

24 to Mr. Eisenberg or his brother?

25 A I got it from the business.

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Q Weren't you gambling?

A I used to go to the trotters. I never bet with any bookmakers.

Q Weren't you introduced to Mr. Eisenberg through a bookmaker?

A That's right.

Q Where did you know the bookmaker from?

A From the garment trade.

Q You never bet with the bookmaker that introduced you?

A No.

Q Was the bookmaker present when he introduced you to Mr. Eisenberg?

A No, he wasn't present at that time.

Q During that four-year period of time that you paid him almost \$125,000, he didn't use any strong arm tactics, did he?

A Never.

Q Where did you pick up the 30,000?

A On Seventh Avenue and 38th Street.

Q No witnesses to that?

A No.

Q Nobody was there?

A There was people in the street.

Q Let me finish, please, if I may.

Was anybody there with Mr. Eisenberg that could verify that he gave you \$30,000?

A No.

Q Over four years you paid Mr. Eisenberg directly approximately two payments, am I correct, two or three payments?

A Over four years?

Q Over the four years.

A What do you mean two payments?

Q Didn't you only see him a couple of times in person?

A In person, yes.

Q In person, I'm sorry. A couple of times, am I correct?

A More than a couple of times.

Q Three, four times, am I correct, most of the time it was his brother that came up to pick up \$600 a week, am I correct?

A That's correct.

Q And during that entire period of four years, Mr. Aronowitz, you only missed a couple of payments; am I correct?

A That's right.

1 dhh Aronowitz-cross 107

2 Q Two or three, am I correct?

3 A Maybe four.

4 Q Four. I don't mean to be exact. A handful in
5 comparison to 200 some-odd payments; am I correct? You
6 have to answer. Am I correct, sir?

7 A Do you want to phrase that question again?

8 Q You only missed a handful of payments in
9 a total of about 200 some-odd payments that you made?

10 A Yes.

11 Q Was anybody ever present when you gave him \$600
12 on the few occasions?

13 A No.

14 Q Anybody ever present when you gave the 600
15 to his brother Phil on occasions?

16 A People working in the shop. I mean, there
17 was people working in the shop.

18 Q Did anybody see you give him the money?

19 A No.

20 Q After the first year, you knew you paid him
21 \$30,000 plus back already, am I correct?

22 A That's right.

23 Q Did you ask the man for the note for \$30,000
24 that you signed?

25 A No.

1 dhh
2 Q Did you ever ask him to get the note back
3 after you paid \$125,000?

4 A No.

5 Q Other than being indicted and charged with
6 a crime of bribery, did you ever come forward to tell
7 any member of law enforcement that Mr. Eisenberg was
8 a shylock?

9 THE COURT: Just ask a proper question. That's
10 excluded.

11 Q Other than after--

12 THE COURT: Not other than after anything. Just
13 ask a direct question.

14 Q Prior to being indicted for the crime of
15 bribery, did you come forward to any law enforcement
16 officer to tell them about the \$30,000 loan and the repayment
17 of \$125,000?

18 A No.

19 Q After the first year you knew you had paid him
20 \$30,000 plus, did you ask his brother Phil to get that
21 \$30,000 note back?

22 A No.

23 Q Did you ever ask him, when you spoke to him
24 on the phone afterwards, for the note?

25 A He would never talk on the phone much.

1 Q Did you see him in person?

2 A When he came up to the place.

3 Q When he came up to the place, did you say, come
4 on, I paid you \$32,000, give me the note back?

5 A He wanted his full money.

6 Q Did you ask him for the note back? Forget
7 what he wanted.

8 A No, no.

9 Q During that four-year period of time did
10 you tell your accountant about the repayment of \$125,000?

11 A My accountant didn't know about it.

12 Q Did you tell your lawyer?

13 A No.

14 MR. WASHOR: Would the court bear with counsel
15 for one moment, please?

16 Q By the way, you told Mr. Eisenberg you needed
17 the \$30,000 for your business, am I correct?

18 A That's right.

19 Q What did you do with it?

20 A I bought machinery.

21 Q With the 30,000?

22 A Some machinery, and I moved from one floor
23 to another floor in the building.

24 Q Sir, was your business doing good at that time,
25

1 when you borrowed the 30,000?

2 A Yes.

3 Q And did you owe any money anywhere else?

4 A I owed some personal debts, yes.

5 Q Not too much, though, am I correct?

6 A I don't remember offhand.

7 Q Anything close to 30,000?

8 A I don't remember offhand.

9 Q How long had you been in business at that point?

10 A I'd been in business for many years.

11 Q Did you go into the bank and ask them to borrow
12 \$30,000 at a legitimate rate for a legitimate period of time?

13 A No.

14 MR. SPEISER: Objection to the characterization
15 of that question.

16 THE COURT: I don't see why you object. Overruled.

17 A I didn't go into the bank.

18 Q When he gave you the \$30,000, did he discuss
19 how long a period of time he was giving you the money for?

20 A I didn't hear you, you walked away.

21 Q When he gave you the \$30,000, wasn't there a
22 discussion as to how long a period of time he was giving
23 you the money?

24 A Yes, the discussion was when I paid him the

30,000 back in full, I'd be finished with him, in one shot.

Q So it was understood that--

A I'd be paying interest the whole time.

Q Ten years or twenty years, however long it would take; am I correct?

A That's right.

Q Sir, you say Mr. Eisenberg had a note that was prepared that you signed?

A That's right.

Q All right. You signed an obligation for \$30,000 where?

A I believe it was on 38th Street there's a bank over there. I think we went into the bank and I signed it.

Q You mean to use the inside of the bank?

A Yes.

Q All right. And you looked at the note?

A It just had my name on there and \$30,000, that's all.

Q And you signed it?

A That's right.

Q Did it have an amount of interest on there?

A No.

Q Did it have a date on there?

A No date, no nothing.

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Q Did it have what they call a maturity date?

A No. It was a regular form note that you buy in the store.

Q By the way, you never gave him a check, did you?

A Not that I recall.

Q Did you ever discuss putting him on the books of your corporation as a method of repayment back for this money?

A No.

Q You testified he gave you the \$30,000 in an envelope on a street corner?

A That's right.

Q Did he just turn the envelope over to you?

A That's right.

Q And you didn't open it?

A Would you open an envelope with \$30,000 in the street in Manhattan?

Q I wouldn't take an envelope with \$30,000 in the street.

MR. SPEISER: Objection, your Honor.

THE COURT: That's interesting but uninformative. Go to the next question.

Q Did you open the envelope?

A When I got back to my place of business.

1 dhh
2 Q Did he have the note there when he gave you the
3 \$30,000?

4 A No.

5 Q That was a day or two later; am I correct?

6 A That's right.

7 Q And you put the envelope quickly in your pocket;
8 am I correct, and went to your place of business?

9 A That's right.

10 Q By the way, sir, did he ever tell you that
11 you don't owe him any money any more?

12 A No.

13 Q Did you ever send money to his brother Phil
14 that you don't have to pay any more?

15 A No.

16 Q Did anybody come to say forget about it, you're
17 off the hook, you paid enough money?

18 A No, as of now I still owe him the money.

19 Q You paid over \$125,000, you said?

20 A That's right.

21 Q You mean according to your agreement, you owe
22 him \$30,000?

23 A That's right.

24 Q While you were paying \$600 a week, you say that
25 you came to him because you were short again, business was

bad, am I right?

A I come to him that I wanted to open up a dress store.

Q You mean expand your business?

A That's right. Not expand it, a store.

Q A store. A side business to the cutting business you owned?

A That's right.

Q And you needed \$7,000; am I correct?

A That's right.

Q And I gave it to you, am I right?

A That's right, in fact he was up to Rockland County.

Q He came to see you?

A That's right, with his dog in the car.

Q And he gave you the money?

A That's right.

Q And you signed a note?

A I didn't sign no note for it.

Q He asked you to sign a note?

A No.

MR. SPEISER: Objection, your Honor, he said he didn't sign a note.

THE COURT: Would you just wait your turn.

Overruled.

Q Did he ask you to sign the note?

A Not for this \$7,000.

Q Did he ask you for any security for the \$7,000?

A No. No.

Q Did you say to him "Hey"--

A I said to him that--

Q May I finish?

A Go ahead.

Q Did you say to him, I already paid you more than \$60,000?

A ~~I told him that a hundred times.~~

Q And continued to pay?

A That's right.

Q And what were the arrangements to pay the \$7,000 back?

A I told him if we -- if I do good in the dress store, I'd be able to do something with him.

Q When he gave you the \$7,000, didn't he make arrangements for X amount of dollars a week to be paid back?

A No.

Q Did he tell you how long he's giving you the 7,000 for?

A No.

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Aronowitz-cross

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Q Did he say it was a gift?

A He didn't say it was a gift. He came up to Rockland County himself to look at the place and he had his dog with him because his doing bit my coat apart.

Q Did he ask for a piece of the action in Rockland County?

A Yes, I said if we do good, I'll give you a piece of the action.

Q You promised him that; is that correct?

A That's right.

Q Did you sign any papers?

A No.

Q Did he ask you to sign any papers?

A No.

Q Did he ask to have something in writing, a document, to prove that he has a financial interest in the place in Rockland County?

A No.

Q Did you pay him the \$7,000 back?

A No, sir.

Q So you owe him now according to you \$37,000?

A 37, that's right.

MR. WASHOR: I ask for the Court's indulgence for just one moment, please.

1 Q Did he ever try to settle this whole thing
2
3 with you?

4 A No.

5 Q The amount of money that you owed him?

6 A No.

7 Q Did you ever try to discuss it, discuss settlement?

8 A No.

9 Q Do you recall on March 15, 1973, approximately
10 a month before you were sentenced to probation in the
11 bribery case, having an interview with some members
12 of the FBI?

13 A Yes.

14 Q Do you remember the nature of the discussion
15 of that interview? Can you answer just yes or no?

16 A I don't remember.

17 MR. WASHOR: With the Court's permission, may
18 I approach the witness box to give a piece of paper to
19 the witness, please?

20 THE COURT: Go ahead.

21 Q Mr. Aronowitz, would you just look at that
22 particular piece of paper and read it to yourself.

23 MR. SPEISER: Can Mr. Washor indicate what
24 piece of paper he is giving to the witness?

25 MR. SPEISER: I think it is 3500 -- excuse me,

1 sir --3510, your Honor.

2
3 Q Have you read it, sir?

4 A Yes.

5 Q Does it refresh your recollection as to the
6 substance of the conversation that you had on March 15,
7 1973, with FBI agents?

8 A No, that isn't accurate.

9 Q I didn't ask whether it is accurate. I just
10 asked whether or not the reading of that report refreshes
11 your recollection as to some of the matter that you
12 discussed with the FBI on March 15, 1973?

13 A Yes.

14 Q Is it not a fact, sir, that you told the FBI
15 agents that Mr. Eisenberg wanted to settle the whole
16 problem for \$15,000?

17 A I don't remember that.

18 Q Do you deny that that is what you said to the
19 FBI agents?

20 A I don't deny but I don't remember it.

21 Q Sir, is it not a fact that you told the FBI
22 agents at that interview, March 15, 1973, that you owed
23 Mr. Eisenberg \$8,000?

24 A I told them I owed him \$7,000 for the store money.

25 Q Did you tell the FBI agents that you had borrowed

1 dhh
2 about \$40,000 from Mr. Eisenberg and that's how much you
3 owed him?

4 A No, I don't recollect that.

5 Q Do you deny that you made those statements in
6 sum and substance?

7 A I don't deny it, I don't remember it.

8 Q Do you recall a conference on January 2, 1973,
9 with Agent Wenig, U.S. Attorney Joel Friedman?

10 A Yes.

11 Q Do you remember the substance of that confrontation?

12 A Well, it was about --

13 Q Can you just answer yes or no? Do you remember
14 in substance?

15 A I don't remember it, no, I don't.

16 MR. WASHOR: May I approach the witness box?

17 THE COURT: Yes.

18 Q I am asking you to look at--

19 THE COURT: What's the exhibit number?

20 Q -- 3508, and read that statement to yourself,
21 please.

22 A I remember part of it.

23 Q Just read it to yourself, please.

24 A I read it.

25 Q Are you complete? Does it refresh your recollection,

redirect

1 sir, as to the substance of the conversations between
2 yourself, FBI Agent Wenig, and Special Attorney Friedman?

3 A Yes, but--

4 Q Excuse me. Does it refresh your recollection?

5 A Yes.

6 Q Is it not a fact, sir, that at that meeting
7 on January 2, 1973, you said that Eisenberg was pressuring
8 you for \$8,000 that you owed him?

9 A No. The figures aren't right, and he wasn't
10 pressuring me in that kind of a way.

11 MR. WASHOR: I have no further cross-examination.

12 THE COURT: Any redirect?

13 MR. SPEISER: Just a few questions, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. SPEISER:

16 Q Mr. Aronowitz, you testified that you had
17 cooperated with the government authorities after you
18 had been indicted; is that correct?

19 A Right.

20 Q Mr. Aronowitz, did you provide the government
21 with certain information?

22 A Yes.

23 Q Did you answer all the questions that were
24 addressed to you by these government agents?
25

1
2 A Yes.

3 Q And you were told that by answering all these
4 questions that your cooperation would be made known to
5 the court?

6 A Right.

7 Q When either the defendant Benjamin Eisenberg
8 or his brother Philip Eisenberg came to your place to
9 collect the money from you, whether it be \$600 or
10 between 50 and \$75 or \$25, do you recall whether they
11 attempted to engage you in conversations or collect this
12 money from you in front of other persons?

13 MR. WASHOR: Objection.

14 THE COURT: Was there any such occasion as
15 described in that question?

16 THE WITNESS: You mean was there people around?

17 THE COURT: Yes.

18 THE WITNESS: No, usually there was-- I mean,
19 my workers were around but I was off on the side.

20 THE COURT: This is redirect. You know, you
21 have covered all of this on your direct examination.

22 MR. SPEISER: I apologize.

23 Q I just want to ask you one last question,
24 Mr. Aronowitz, and that is, you have testified that you
25 owed, according to your statements, you owed Mr. Eisenberg

\$30,000 on one loan and \$7,000 on another loan,
and that totals \$37,000?

A Right.

MR. SPEISER: I have no further questions.

THE COURT: All right. Step down.

(Witness excused)

THE COURT: Next witness.

MR. SPEISER: The government rests its case.

THE WITNESS: Am I excused?

THE COURT: Yes.

THE WITNESS: Can I go home?

THE COURT: Yes.

Ladies and gentlemen, I will give you a five-minute recess while I talk to the lawyers about some legal matters.

(Jury excused)

THE COURT: All right, Mr. Washor.

MR. WASHOR: I most respectfully move this court, at the end of the government's case, to dismiss each and every count of the indictment predicated upon the grounds the government has failed to establish a prime ~~face~~ case.

THE COURT: On the basis of the documentary evidence and the proof adduced here, the jury could beyond a

reasonable doubt find that the government's case has been sustained and the motion is denied.

MR. WASHOR: I respectfully except, your Honor.

THE COURT: Are you ready to go forward?

MR. SPEISER: Your Honor, I cannot. It is now 20 after 5.

THE COURT: Well, it is half a day. Why aren't you ready?

MR. WASHOR: Because I reasonably anticipated the day would end at about 5 o'clock and, to be very frank with the court, I had hoped--

THE COURT: Look, we started late to accommodate you.

MR. WASHOR: I understand that.

THE COURT: And you want to quit early for accommodation, too. Do you have any witnesses you propose?

MR. WASHOR: Judge, the only decision that has to be made, I will be very frank with the court, is whether or not I am going to proffer a defense by way of Mr. Eisenberg.

THE COURT: Suppose you take ten minutes to discuss that again with your client and come to a decision.

MR. WASHOR: I can come to a decision if you give me the ten minutes. I will not ask for any delay beyond that.

1 dhh
2 THE COURT: Very good.

3 (Recess)

4 (Jury absent.)

5 MR. WASHOR: Your Honor, I neglected, in my
6 motions, to reiterate all of the motions made relative
7 to the legal sufficiency of the indictment as prepared
8 through my moving papers and memorandum submitted to the
9 court as if reiterated in its entirety at this point.

10 THE COURT: They will be deemed to have been made
11 and denied.

12 MR. WASHOR: Exception. I don't think I
13 have to except. I didn't mean to be disrespectful.

14 The defense will rest, your Honor.

15 THE COURT: Bring in the jury and sum up.

16 MR. WASHOR: Your Honor, may I make an application
17 to the court?

18 THE COURT: Yes.

19 MR. WASHOR:: Can I make the application in
20 the absence of the jury, your Honor?

21 THE COURT: Yes.

22 MR. WASHOR: I would respectfully request
23 this court to permit counsel to have the evening to prepare
24 the summation and final argument.

25 THE COURT: I don't think that is necessary. This

1 case has been pending for a considerable period of time,
2 Mr. Washor. You have requested the accommodations
3 that you have received. You were able to weave in your
4 trial problems before Judge Cannella, to get an adjournment,
5 a long adjournment, of this case to a date that you thought
6 you could be reached.
7

8 We suspended for nearly an hour and a half
9 this morning to let you go on with some phase of that
10 case before Judge Cannella because it became timely
11 for you to do that.

12 We have reached the point now in the case
13 of reasonable simplicity where I think it would be
14 appropriate, and particularly in terms of the inclement
15 weather here to have the summations tonight and charge
16 the first thing in the morning.

17 MR. WASHOR: May I just suggest to the court
18 and I do this most respectfully, your Honor, that while
19 I have made every endeavor to be prepared to go to
20 trial today, I have completed all of the aspects of
21 a criminal trial without an unreasonable imposition upon
22 the court. My actual engagement before another judge in
23 a trial of that tremendous length was one that could not
24 be avoided.

25 I suggest to your Honor that short of the

1
2 preparation, the final argument, every matter has been
3 completed, the requests to charge were submitted, all
4 motions were timely made, sir.

5 Further, there's been no delay vis-a-vis the
6 cross-examination because the court has given me the period
7 of approximately a half hour to read 3500 material that
8 was given to me for the first time this morning. The
9 severity of the charge is not diminished by the simplicity
10 of the trial.

11 THE COURT: Please don't dramatize.

12 MR. WASHOR: I am not, I am being most sincere,
13 Judge Pollack.

14 THE COURT: I am telling you that I think the
15 day is still young and it is appropriate now to hear
16 the summations of both sides.

17 In accordance with the rule, the government
18 will sum up first, you will sum up second, the government
19 will have a brief period.

20 Bring in the jury.

21 MR. WASHOR: Would your Honor give me 10 or
22 15 minutes to coordinate thoughts?

23 THE COURT: I thought that's what you were
24 doing.

25 MR. WASHOR: On the contrary.

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THE COURT: I will certainly give you ten minutes to coordinate your thoughts and we will have the summation thereafter.

MR. WASHOR: Most respectfully,

THE COURT: Please, don't keep this going because you are using up your ten minutes.

MR. WASHOR: I just want the record to reflect in spite of the fact I requested ten minutes to formulate my thoughts I object to the court putting us in a position to make final argument at this particular juncture of the trial.

THE COURT: You have made your point on the record. It is without any substance or without any reason in the exercise of my discretion.

(Recess)

(Jury present)

THE COURT: State your decision on the record.

MR. WASHOR: Mr. Eisenberg, the defendant rests.

THE COURT: Ladies and gentlemen, that concludes the taking of evidence and we will now hear the arguments of counsel on what each side believes was established and tomorrow morning I will give my charge and instructions on the law.

All right, Mr. Speiser.

* * * * *

Eisenberg
Charge
Pollack
850

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, we have reached the concluding phase of this trial, and the case will shortly be placed in your hands for a verdict.

I want to express to you the Court's appreciation and thanks for your attentiveness and patience during this brief trial as befits the tryers of the facts in a case of importance, and this is a case of importance.

I shall now give you your final instructions, which will guide your deliberations.

First, let me read to you the indictment in this case, the charge that has been made.

"The Grand Jury charges:

"1. On or about May 6, 1975, in the Southern District of New York, Benjamin Greenberg, the defendant, having duly taken an oath as a witness that he would testify truthfully before a Grand Jury of the United States of America, duly empanelled and sworn in the United States District Court for the Southern District of New York, and inquiring for that District unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations as hereinafter set forth.

1 dhjb 3

2 "2. At said time and place, said Grand Jury
3 was conducting an investigation into possible violations
4 of United States statutes prohibiting extortion, loan-
5 sharking and racketeering and other federal criminal
6 statutes, with a purpose of determining whether any persons
7 violated said statutes.

8 "3. It was material to said inquiry to ascer-
9 tain: (a) the knowledge and the extent of participation
10 by the defendant Benjamin Eisenberg and others in situa-
11 tions wherein usurious loans and extensions of credit
12 had been made; (b) the knowledge and the extent of par-
13 ticipation by the defendant Benjamin Eisenberg and others
14 in transactions wherein extortionate means were used in
15 the collection of extensions of credit; and (c) the iden-
16 tifies of persons to whom the defendant Benjamin Eisenberg,
17 and others associated with him, had lent sums of money at
18 usurious rates of interest.

19 "4. At said time and place Benjamin Eisenberg,
20 the defendant, appearing as a witness under oath before
21 said Grand Jury did testify falsely with respect to the
22 aforesaid material matters and did make the following
23 false material declarations:"

24 (Continued on next page.)

25

1 dhjb 4

2 These are the declarations complained of in
3 Count 1:

4 "Q Who owes you money?

5 "A Names, names I've forgotten. I don't pay any
6 attention to that. This is the type of business you just
7 forget about people that owe you money.

8 "Q Mr. Eisenberg, you loaned money out and if
9 people don't pay you back you just forget about it?

10 "A That's right.

11 "Q Have you ever threatened anybody in a situation
12 where --

13 "A No, siree, I'm not a gangster by any means and
14 never threatened anybody in my life.

15 ***

16 "Q But you stated, Mr. Eisenberg, that a number of
17 your loans are still outstanding, is that correct?

18 "A If they are outstanding, if I get my money, I'm
19 happy to get it. I don't go looking for it. When they
20 have it, they come and pay me. I don't threaten anybody
21 and I don't say you must pay me or anything like that."

22 The charges under Count 2 relate to this series
23 of questions and answers:

24 "Q You had known these people a number of years,
25 right?

1 dhjb

2 "A Yes, they always pay me.

3 "Q You must know their last names, some of them.

4 "A No, I don't know their last names. I don't
5 know of anybody's last name as a matter of fact. In this
6 business nobody gives you a last name."

7 The charges under Count 3:

8 "Q Is \$500, Mr. Eisenberg, the total amount you
9 have ever lent any individual?

10 "A Any individual?

11 "Q Yes, at one time.

12 "A Well, I've loaned -- I've loaned somebody more
13 than that, but a friend.

14 "Q Who?

15 "A A friend. I wouldn't divulge his name because
16 he wouldn't like the idea.

17 "Q Mr. Eisenberg, you are going to be required to
18 divulge his name because the Grand Jury immunity order
19 says that you must answer all our questions.

20 "Now would you please tell us the name of the
21 individual to whom you have lent money more than \$500.

22 "A I'm trying to remember. I can't remember who
23 I loaned \$500. It's not easy --

24 "Q I will ask you again.

25 "You just indicated that you don't want to give

1 dhjb

2 us the name of the individual who you lent a lot of money
3 to because he's a friend of yours.

4 "What is the name of that friend?

5 "A The name of the friend?

6 "Q Yes.

7 "A Is it permissible for me -- must I tell you?
8 Maybe this man doesn't want to know who -- he don't want his
9 name involved. He's a married man, he has a family.

10 "Q Mr. Eisenberg, you are required because of the
11 fact that you have been granted immunity to give us the
12 name of that individual.

13 "A His name is Jack.

14 "Q Jack what?

15 "A I don't know his second name.

16 "Q Where does he live?

17 "A I don't know where he lives.

18 "Q He's a friend of yours and you don't know his
19 last name?

20 "A I know many people. I don't know their last
21 name. I know them for many years and they never tell me
22 their last name."

23 The charges under Count 4:

24 "Q How much do you usually lend money at?

25 "A I loan these people money so they could straighten

1 dhjb

2 out their gambling --

3 "Q You did not answer my question.

4 "How much do you lend them money at, what rate?

5 "A I don't lend them money at any rate. I only
6 lend them money to get them even up with their debts so
7 they can continue playing.

8 "Q Mr. Eisenberg, you never loaned anybody money
9 and charged them interest?

10 "A If I did?

11 "Q Yes.

12 "A I possibly did, yes.

13 "Q On occasions then you did loan people money and
14 charged them interest?

15 "A On occasions, yes, I did.

16 "Q How much interest?

17 "A I don't remember."

18 Now, Count 5:

19 "The Grand Jury further charges:

20 "1. On or about May 6, 1975 in the Southern Dis-
21 trict of New York, Benjamin Eisenberg, the defendant, un-
22 lawfully, wilfully and corruptly did obstruct and impede
23 the due administration of justice in the manner herein-
24 after described.

25 "2. On or about May 6, 1975, Benjamin Eisenberg,

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2 the defendant, who had previously received a grant of
3 immunity pursuant to Title 18, United States Code, Section
4 6002, appeared as a witness before a grand jury in the
5 Southern District of New York, which was then and there
6 inquiring into possible violations of United States laws
7 prohibiting extortion, loansharking and racketeering and
8 other federal statutes.

9 "3. It was material to the investigation de-
10 scribed in paragraph 2 hereof, that the Grand Jury ascertain
11 (a) the knowledge and the extent of participation by the
12 defendant Benjamin Eisenberg and others in situations where-
13 in usurious loans and extensions of credit had been made;
14 (b) the knowledge and the extent of participation by the
15 defendant Benjamin Eisenberg and others in transactions
16 wherein extortionate means were used in the collection of
17 extensions of credit; and (c) the identities of persons
18 to whom the defendant Benjamin Eisenberg and others
19 associated with him, had loaned sums of money at usurious
20 rates of interest.

21 "4. On or about the 6th day of May, 1975,
22 Benjamin Eisenberg, the defendant, having duly taken an
23 oath that he would testify truthfully as a witness before

24 (Continued on next page.)
25

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the aforesaid Grand Jury, a body authorized by law to administer an oath, did give false and evasive answers to questions asked of him as hereinafter set forth.

"Q On occasions then you did loan people money and charged them interest?

"A On occasions, yes, I did.

"Q How much interest?

"A I don't remember.

Q Who was the last person you lent money to, Mr. Eisenberg?

"A I don't recollect.

"Q When was the last time you lent somebody money?

"A I still don't remember that.

"Q How long have you been lending money at interest rates, charging interest?

"A Any time it happens --

"Q Just approximately how many years have you been lending people money?

"A Maybe three years, maybe five years. I don't remember when things happened when you're in this business. People --

"Q So you only lent people money within the last three to five years, is that what you are telling the Grand

Jury?

"A Maybe I loaned them money 20 years ago. I can't recollect that. Who could remember that far back.

"Q I think you could remember. If you loaned somebody money, you should remember who you lent money.

"A No, I don't remember. No. Every day is a new day and there is so many -- so much involved with each day that I do things that I can't remember. It just falls -- it just gets out of your memory. I sometimes don't remember what happened the day before.

"Q Given your assertion that it was somewhere between two and 15 years ago that you first lent money to any individual at any rate of interest, could you please name for the Grand Jury some of the people to whom you have lent money over the years?

"A I couldn't remember anything like that.

"Q How many people have you lent money to?

"A How many? That's another question. It could be three, it could be five. I can't remember people that I loaned money to.

"Q Could it be more than five?

"A I don't know. I really -- you're asking me questions that sound very vague to me. I can't --

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2 "Q No, I am asking you a very specific question.
3 I am asking you could the number of people that you have
4 lent money to be more than five.

5 "A Could it be more than five?

6 "Q Yes.

7 "A I couldn't say.

8 "Q Could it be more than ten?

9 "A It could be ten, it could be 15, it could be
10 three. I don't know.

11 "Q Let's take it one at a time.

12 "Could it be more than five?

13 "A Could it be more than five people?

14 "Q Yes.

15 "A Yes, it probably could.

16 "Q Could it be more than ten?

17 "A Well, I don't believe it could be more than ten.

18 "Q So your testimony is now that it was probably
19 between five and ten people?

20 "A That's correct. As far as I could recollect.
21 I can't specifically make a statement like that without
22 really knowing how many people I loaned money to.

23 "Q Of the five or ten people that you may have lent
24 money to, could you please name some of those people?

25 "A These are people that gamble. They come today

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2 and they're gone tomorrow.

3 "Q How would you collect your money?

4 "A Well, in the course of business. And then sud-
5 denly they disappear and you don't get paid.

6 "Q You must know their names.

7 "A Again, I could say Whity, Lefty. They come and
8 go and they're always -- they never tell you where they
9 live. You never could contact them. They'll give you a
10 telephone number where you could call them and you make
11 arrangements that way, and then if the guy don't pay you,
12 there is nothing you could do about it. He just disappears
13 into thin air.

14 ***

15 "Q Is it your testimony that you cannot remember
16 any of the names of the people to whom you lent money?

17 "A I say I don't remember their names. I remember
18 Lefty, Whity, Joey. That's the way they operate in this
19 business.

20 "Q Where did you know Whity from?

21 "A Whity?

22 "Q Yes.

23 "A I knew him from going into a bar, having a
24 drink, meeting him. You're in the business where you con-
25 duct business, where you get customers.

"Q What bar?

"A Any bar, you know. You go in the midtown area, you go in the theatrical area. You frequent bars where you meet people --

"Q Who business? What business was Whity in?

"A He's a gambler like myself. They usually gamble.

"Q When was it that you lent money to Whity?

"A Oh, I don't know. I don't remember that.

"Q When you loaned people money, Mr. Eisenberg, how did you go about collecting the money?

"A By word of honor.

"Q Where did you actually collect the money, physically?

"A We'd meet in the street, always in the street, always at a bar or other -- if he'd come there -- if he paid me. You took your chances with people like that. You gave them a rate of interest, and the chances are that you get your money back. In the long run, they wouldn't pay you. They'd just forget about it and there is nothing I could do about it.

"Q Does anybody owe you money still, right today?

"A Well, they owe me money, but I don't see these

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people and they don't pay me.

"Q Who owes you money?

"A Names, names I've forgotten. I don't pay any attention to that. This is the type of business you just forget about people that owe you money.

"Q Mr. Eisenberg, you loaned money out and if people don't pay you back you just forget about it?

"A That's right.

"Q Have you ever threatened anybody in a situation where --

"A No, siree, I'm not a gangster by any means and never threatened anybody in my life.

"Q Let me state it very, very specifically.

"I don't care what your intentions were or what the intentions of anybody else were. I don't care why you may have been speaking with somebody. All I want to know is the answer to this question and I will ask you for a yes or no answer.

"Have you during the last 12 months had any conversation with any individual who has owed you money as a result of a debt on a loan that you made to that individual?

"A Well, there are people that owe me money and I

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always go and try to get my money which they pay me. I don't have any problems collecting my money with honest people.

"But if there is somebody that owes me and disappears, I can't collect the money and I can't -- I don't know where to find them. But I don't have any problems with people that I know what I deal with.

"Q Like who?

"A Well, friends.

"Q Like who?

"A People I know.

"Q Like who? I want names.

"A Well, I don't think these people would like the idea that I gave them -- their names that I loaned them money.

"Q Mr. Eisenberg, as much as I may want to defer to your personal relationships with other people, this Grand Jury is not interested in what other people think. This Grand Jury is interested in finding out who you have lent money to.

"A Okay. I've loaned money to people that I know for many years.

"Q Mr. Eisenberg, we're trying to get names not generalities. So would you please give us the names of

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the people to whom you have lent money.

"A Names like Joe and Andy and Sammy. People I know.

"Q You said that on some people that you know you had no problems collecting.

"A Yes.

"Q You had known these people a number of years, right?

"A Yes, they always pay me.

"Q You must know their last names, some of them.

"A No, I don't know their last names. I don't know of anybody's last name as a matter of fact. In this business nobody gives you a last name.

"Q Have you collected money from any individual during the last six years?

"A From an individual?

"Q Any individual.

"A Yes, I have.

"Q Who is the individual and where did you collect the money?

"A I just explained to you. I used to meet them in the street. They'd call me home, I'll meet you so and so. And I'd go and I'd meet them.

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"Q I would like the names of these people.

"A Well, they're all names, Lefty, Whity, Frenchie, people I've known. That way you get introduced that way. They never give you a second name. And I would meet them and settle my differences.

"Q Is \$500, Mr. Eisenberg, the total amount you have ever lent any individual?

"A Any individual?

"Q Yes, at one time.

"A Well, I've loaned -- I've loaned somebody more than that, but a friend.

"Q Who?

"A A friend. I wouldn't divulge his name because he wouldn't like the idea.

"Q Mr. Eisenberg, you are going to be required to divulge his name because the Grand Jury immunity order says that you must answer all our questions.

"Now would you please tell us the name of the individual to whom you have lent money more than \$500.

"A I'm trying to remember. I can't remember who I loaned \$500. It's not easy --

"Q I will ask you again.

"You just indicated that you don't want to give

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2 us the name of the individual who you lent a lot of money
3 to because he's a friend of yours.

4 "What is the name of that friend?

5 "A The name of the friend?

6 "Q Yes.

7 "A Is it permissible for me -- must I tell you?
8 Maybe this man doesn't want to know who -- he don't want
9 his name involved. He's a married man, he has a family.

10 "Q Mr. Eisenberg, you are required because of the
11 fact that you have been granted immunity to give us the
12 name of that individual.

13 "A His name is Jack.

14 "Q Jack what?

15 "A I don't know his second name.

16 "Q Where does he live?

17 "A I don't know where he lives.

18 "Q He's a friend of yours and you don't know his
19 last name?

20 "A I know many people. I don't know their last
21 name. I know them for many years and they never tell me
22 their last name.

23 ***

24 "Q But you stated, Mr. Eisenberg, that a number of
25 your loans are still outstanding, is that correct?

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"A If they are outstanding, if I get my money I'm happy to get it. I don't go looking for it. When they have it, they come and pay me. I don't threaten anybody and I don't say you must pay me or anything like that.

"Q Mr. Eisenberg, when is the last time that you made an effort to collect money owed you on a loan?

"A Made an effort to collect?

"I never made an effort to collect any money on any loan. If a man wants to pay me, he knows where to find me and he pays me.

"Q What is the most any person has ever owed you at one time?

"A Ever? You are asking me the same question.

"Q Within the last five years. Mr. Eisenberg. Has anyone ever owed you \$10,000?

"A No.

"Q Has anyone ever owed you \$5,000?

"A No. As far as I can recollect in the last -- what did you say, last how many years?

"Q Within the last five years.

"A Well, you're going back in five years' time.

I can't --

"Q Within the last year.

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2 "A Maybe they did -- maybe they had -- I don't
3 remember. How could I remember these things. These are
4 transactions that are made and forgotten.

5 "Q What is the most ever anybody has ever owed you?

6 "A I can't recollect that.

7 "Q Was it more than \$50,000?

8 "A Let's forget about that. Of course not.

9 "Q Was it more than \$10,000?

10 "A I don't believe so. I didn't deal in that way.
11 If a man wanted \$10,000, it was only for overnight and I
12 could get it for him --

13 "Q So you have lent somebody \$10,000?

14 "A I don't remember. If I did, I did, but I can't
15 recollect."

16 Briefly, as indicated by the indictment I have
17 read to you, the defendant on trial has been charged by the
18 Government with criminal offenses of perjury and obstruction
19 of justice, not any other crimes.

20 It is your recollection of the facts that counts
21 here, not the recollection of counsel and not my recol-
22 lection. It is for you to determine the weight that you
23 will give to the evidence, the credibility that you will
24 extend to the witnesses who testified, and the reasonable
25 inferences that are to be drawn from the evidence that has

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2 been received.

3 You have heard the summations of counsel. If
4 your recollection differs from that of counsel or from my
5 recollection, if I should refer to any evidence, your
6 recollection and the judgment of the facts that you make
7 control.

8 You must approach your duty with an attitude of
9 complete fairness and impartiality, one in which you reach
10 your decision solely on the evidence in the trial and
11 without the slightest trace of sympathy, prejudice or bias
12 as either for or against the Government or the defendant.

13 The fact that the Government is a party here
14 entitles it to no greater or no less consideration than that
15 accorded to any party in a Court of the United States.
16 All parties are equals at this bar of justice.

17 It is my province to instruct you as to legal
18 principals that are to be followed in the case, and it is
19 your duty to accept those instructions as they are given
20 to you by me.

21 On the other hand, it is your exclusive function
22 to determine the facts on the basis of your consideration
23 of the evidence and then, applying the instructions as to
24 the law that I am about to give you, to decide whether or
25 not the defendant on trial before you is guilty of the

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charges made against the defendant.

You are the sole and exclusive judges of the facts and your decision as to the fact is final and conclusive.

During the trial I was called upon to make rulings on various questions, such as when a question put to a witness was objected to and after a question was answered a motion was made to strike the answer. I sustained some objections and I overruled others. I struck out answers and exhibits that were offered. It is essential in the performance of your duty that when anything was ordered stricken from the record, you put it out of your mind and disregard it.

Similarly, if a question was asked and an objection to that question was made and sustained and no answer was given, the question itself should play no part in your consideration of the case.

No inferences as to the guilt or innocence of the defendant on trial, or as to the credibility of any witness, should be drawn from any rulings that I have made or from the fact that upon occasion I asked questions of certain witnesses. My questions were intended only for clarification or to expedite matters. They were not intended to suggest any opinions as to the guilt or innocence of the defendant or as to the credibility of anyone

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who appeared before you. It is neither my intention nor function to favor one side or the other or to imply that I have any views as to the credibility of any of the witnesses or as to the guilt or innocence of the defendant. That's your sole and exclusive function.

As I have indicated earlier, the indictment here is but a formal method of accusing the defendant of a crime or crimes and bringing the case into Court for trial and determination. It is not any evidence that a crime or crimes has been committed and no inference of any kind may be drawn from the indictment. The grand jury which returned the indictment was not asked to find out if the defendant was guilty. That's solely your function and duty.

The defendant before you has pleaded not guilty. That means that the Government has the burden of proving guilt beyond a reasonable doubt with respect to each crime that the defendant is accused of having committed. That burden never shifts.

A defendant is under no obligation to undertake to prove his innocence. Indeed, a defendant does not have to submit any evidence at all. On the contrary, under our law, a defendant is presumed to be innocent of any charge laid against him in the indictment. That presumption

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existed when the indictment was handed down, and remains throughout the trial, and in your deliberations. It is a presumption which is sufficient in itself to require an acquittal of the defendant unless you, the jury, on all the evidence are convinced of his guilt beyond a reasonable doubt.

A reasonable doubt is one that arises out of the evidence in the case or the lack of evidence. It is a doubt which is not merely shadowy. A reasonable doubt is one that appeals to your reason, to your judgment, to your common sense and your experience. It is not an excuse to avoid performance of an unpleasant duty. A reasonable doubt is such as would cause prudent people to hesitate before acting in matters of importance to themselves.

Putting that a little differently, if you are confronted, as indeed you are here, with an important decision, and after reviewing all the factors that are pertinent to that decision you find yourself beset by uncertainty and unsure of your judgment, then you have a reasonable doubt.

Conversely, in that same situation, if you have taken into account all the elements that pertain to the problem and you find you have no uncertainty and no reservation about your judgment, then you have no reasonable

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doubt.

Proof beyond a reasonable doubt does not mean proof to a positive certainty or proof beyond all possible doubt. If that were the rule, few persons, however guilty, could ever be convicted. It is practically impossible for a person to be absolutely and completely convinced of any fact which in its nature is not susceptible of mathematical certainty. So that kind of certainty, as I have tried to indicate, is not the testimony. You are going to have to rely upon your own common sense and general experience in evaluating the evidence.

There are, generally speaking, two types of evidence from which a jury may properly find the truth in the facts of the case. One is direct evidence, such as the testimony of an eyewitness or a participant. The other is indirect or circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

In order to prove a fact by circumstantial evidence, there must be positive proof of some fact which, though true, does not itself directly establish the fact in dispute but does afford basis for a reasonable inference of its existence.

The fact or facts upon which it is sought to

base an inference must be shown and not left to rest in conjecture; and, when shown, it must appear that the inference drawn is the only one that can fairly and reasonably be drawn from the facts, and that any other explanation is fairly and reasonably excluded.

Now, let me give you a common example of circumstantial evidence so that you will understand what I have been saying.

Suppose this morning when you came into Court the sun was shining and there were no clouds in the sky, and when you came into this trial courtroom the shades were drawn and the blinds were down so that you couldn't see outside. And pretty soon someone came through that door, walking into the courtroom with a dripping umbrella and a dripping raincoat.

You haven't been outside in the meantime. When left outside it was clear, but when this person came in with his dripping umbrella and raincoat, your mind is led to believe that something may have happened outside. You would be entitled to infer from the circumstances that there is a dripping umbrella and a raincoat, that's a fact, you would be entitled to infer that it is raining outside.

Thus, circumstantially you infer from a fact, the dripping raincoat and umbrella, some other matter, the rain

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outside. The mind is led circumstantially from a fact to reach another fact.

That will give you an illustration of what circumstantial evidence is and what it may lead to.

It is not necessary that the participation or lack of participation of a defendant in any crime be shown by direct evidence. The connection may be inferred from such facts and circumstances as legitimately tend to sustain that inference.

In this case, of course, there has been both direct and indirect or circumstantial evidence. The Government contends that its evidence establishes the defendant's guilt. The defendant contends that no evidence has overcome the presumption of his innocence and that at least there is a reasonable doubt of his guilt.

You will apply to all the evidence the same standard of proof that must satisfy you of the guilt of the defendant beyond a reasonable doubt, or else you must acquit the defendant.

In evaluating the evidence which has been placed before you, you will determine the reliability of the witnesses you have heard and the extent to which you count on any or all of them for accurate accounts of the facts.

You had an opportunity to observe the witnesses

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as they testified. You want to be asking yourselves and thinking together how did each witness impress you? Did the witness appear to be truthful, candid, frank, forthright? Did the witness seem evasive or shifty or suspect in any other way?

Did the witness appear to know what he was talking about and did he impress you as having a purpose to report his knowledge to you truthfully and accurately? Was he consistent or self-contradictory? How did the manner and matter of his direct testimony compare with his manner and matter of testimony tested on cross examination?

You should consider not only the intrinsic persuasiveness of each person's testimony by itself but its setting in the circumstances of the whole case.

Next, the degree to which any particular item of testimony is corroborated or contradicted by other evidence in the case, and all such things, you would test by your own mature judgment, about life and about people and about human behavior.

A witness may be discredited or, as we say, impeached by contradictory evidence or by evidence that at other times he made statements inconsistent with his testimony on the witness stand.

You should consider, among other things, the

question of interest or motive, if any. The witnesses have identified their backgrounds and associations. You may wish to consider whether the witness may have had inducements or incentives or motives to shade the truth or had biases of one kind or another that have made the witness, consciously or not, to give you less than a completely accurate account of the facts he purported to portray.

If you believe a witness has wilfully sworn falsely before you, you are free to disregard all his testimony, or you may choose to accept and credit such parts of it as your judgment dictates should be accepted.

The fact that there has been a prior conviction of a felony doesn't render a witness incompetent to testify. It is merely a circumstance which you may consider in determining the credibility of the witness.

The defendant did not testify on his own behalf and our law says he is privileged to testify or not to testify as he wishes. The failure to testify cannot be considered by you as evidence against him, or form a basis for any presumption or inference unfavorable to him. A defendant is not required to establish his innocence.

So much for the general rules of law. Now let's turn to the specific statutes that underly the charges in this indictment.

1 The indictment charges the defendant with four
2 counts of perjury in violation of a law which is referred
3 to as Title 18, Section 1623 of the United States Code.
4 Section 1623 is entitled "False Declarations Before Grand
5 Jury or Court." The pertinent provision of this statute
6 read as follows:
7

8 "Whoever under oath in any proceeding before...any
9 Court or grand jury of the United States knowingly makes
10 any false material declaration..." is guilty of a crime.

11 Simply stated, perjury is the wilful giving of
12 false testimony as to a material matter before a competent
13 tribunal while under oath.

14 In order to sustain its burden of proof against
15 the defendant, Benjamin Eisenberg, on the perjury counts,
16 the Government must establish beyond a reasonable doubt
17 these essential elements:

18 One. That on or about May 6, 1975, Benjamin
19 Eisenberg took an oath to testify truthfully before a
20 grand jury sitting in this, the Southern District of New
21 York, a body authorized by law to administer oaths;

22 Two. That Benjamin Eisenberg made false state-
23 ments as to matters about which he testified under oath
24 as set forth in the indictment;

25 Three. That such false statements were wilfully

and knowingly made in that at the time the defendant made these statements he knew them to be false; and

Four. That the matters as to which it is charged he made the false statements were material to the issues under inquiry by the grand jury.

In the present case, the evidence shows, and there's no dispute, that on May 6, 1975, Benjamin Greenberg did appear before the grand jury in the Southern District of New York; that he was under oath to testify truthfully before the grand jury, and that the grand jury was authorized by law to administer oaths.

The evidence also shows, and it is not disputed, that the defendant gave the testimony which he is alleged in the indictment to have given.

Further, I charge you as a matter of law that the matters about which the defendant testified as set forth in the indictment were material to issues under inquiry by the grand jury before whom the testimony was given. The issue of materiality is one for the Court and is not a question of fact for the jury.

Hence, you need not concern yourself with the first and fourth elements of the perjury counts, which I have just outlined for you.

You must direct your attention to the second

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and third elements which I have outlined and they raise the following two questions for you to consider with respect to each perjury count of the indictment.

One. Was the part of the testimony given by the defendant, as set forth in the first four counts of the indictment, false?

Two. Did the defendant give any part of the testimony wilfully and knowing at the time that it was false?

The Government must establish beyond a reasonable doubt the existence of facts which show that the defendant's testimony concerning these facts was false. In other words, the Government must establish what it maintains are the true facts, and in that connection, the Government called the witnesses whom you have heard, who testified to their alleged transactions with this defendant.

Now, as I have indicated, when I say that the "falsity" of the defendant's testimony must be established, I mean that the falsity of the set of facts in the defendant's testimony before the grand jury must be established. The evidence offered to establish this falsity need not, and in most cases will not, come from a witness who knows what a defendant's actual testimony was before the grand jury, or in fact whether or not a defendant testified at all.

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Under the perjury statute, proof beyond a reasonable doubt of the elements of the crime of perjury, as I have given them to you, is sufficient for a conviction. It is not necessary that such proof be made by any particular number of witnesses or by any specified documentary or other type of evidence.

Of course, the jury must determine whether the defendant, Benjamin Eisenberg, knew what the questions meant at the time he testified before the grand jury. If you find that the questions posed before the grand jury were vague and ambiguous, then it would be impossible for you to determine in an objective sense what the questions meant to the defendant at the time he answered the questions.

The rule of falsity I have outlined above is satisfied if the Government proves falsity beyond a reasonable doubt of any one assignment of perjury in the count in the indictment that you are considering. By this I mean that it is enough if the Government shows that just some of the testimony cited in each of the four perjury counts in the indictment was false.

Thus, the perjury counts contain answers given by the defendant reciting more than one fact. It is not necessary that the Government prove that each of these factual statements is false. It is sufficient if the Government

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2 proves, or has proved, that at least one factual statement
3 is false.

4 The law, of course, recognizes no excuse and no
5 justification for perjury. A witness is compelled by law
6 to testify truly under oath before a competent tri-
7 bunal.

8 In this regard, I wish to remind you of the
9 important function served by the law against perjury and
10 false declarations. In the administration of justice, all
11 of us are bound by oaths. You have, each of you, taken an
12 oath. You raised your hands when you were sworn as jurors
13 to well and truly try this case and render a just and true
14 verdict based on the evidence, so help you God. I have,
15 so has the special attorney and so has the counsel for the
16 defendant, and every witness who has been on the witness
17 stand has taken an oath. I took an oath as a judge to
18 administer justice to all, and equally. The lawyers took
19 an oath when they became lawyers.

20 The administration of justice depends upon respect
21 for the sanctity of the oath. When one is charged with
22 the crime of perjury, he is charged with violating an im-
23 portant law, one which is at the heart of our administration
24 of justice.

25 Now, turning to the fifth count of the indictment,

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2 the count which charges obstruction of justice, the jury
3 would have to find beyond a reasonable doubt the following
4 elements:

5 One. On or about May 6, 1975, the grand jury
6 was conducting an investigation to ascertain the knowledge
7 and extent and participation by the defendant and others
8 of situations wherein usurious loans and extensions of
9 credit had been made and of any transactions wherein ex-
10 tortionate means were used to collect extensions of credit,
11 and the identities of persons to whom the defendant and
12 others associated with him had loaned sums of money at
13 illegally usurious rates of interest;

14 Two. That on or about May 6, 1975, the defendant
15 wilfully and knowingly gave false or evasive testimony in
16 respect to that investigation;

17 Three. That the testimony that the defendant
18 gave on or about May 6, 1975, before the grand jury was
19 material to the matter under investigation; and

20 Four. That the defendant, by such testimony,
21 corruptly, wilfully and knowingly endeavored to obstruct
22 or impede the due administration of justice.

23 In determining the guilt of the defendant under
24 Count 5, evidence has been presented from which you may
25 find that the grand jury was conducting the described

investigations.

Specifically, on May 6, 1975, an investigation into the possible violation of United States laws prohibiting extortion, loansharking, racketeering and other Federal statutes.

I charge you that you are to determine whether defendant's testimony was proven to be false or evasive and that in reaching this determination you may consider the whole of defendant's testimony including any inherent inconsistencies or irreconcilable contradictions therein.

As I told you when I discussed the first four counts of the indictment, the perjury counts, materiality is an issue for the Court and not for the jury. Accordingly, I charge you that the testimony of the defendant before the grand jury on May 6, 1975, was material to the matters under investigation on that date.

If you find beyond a reasonable doubt that the defendant gave false or evasive answers as set forth in Count 5 of the indictment, then you must also determine whether those false or evasive answers constituted a corrupt, wilfull and knowing endeavor to obstruct or impede the due administration of justice.

The word "corrupt," however, doesn't add an additional element to the crime and I charge you as a matter of

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2 law that any unauthorized endeavor to obstruct or impede
3 the due administration of justice violates the law.

4 The law is that the due administration of justice
5 includes an official inquiry undertaken by a grand jury.
6 Therefore, the issue is whether there is involved here a
7 corrupt endeavor to obstruct or impede the official inquiries
8 undertaken by the grand jury in this instance.

9 I also charge you as a matter of law that ob-
10 struction of justice includes concealing from a grand jury
11 information which is relevant and germane to its functions.

12 I also instruct you that you don't have to find
13 that the defendant was successful in his endeavor to influ-
14 ence, impede or obstruct the grand jury inquiries. Any
15 effort or endeavor, whether successful or not, which is
16 made for the purpose of corruptly, wilfully and knowingly
17 obstructing or impeding the proceeding is condemned.

18 It has been stated frequently that you bring
19 into the jury box with you the common sense and experience
20 of your daily lives. You don't check your common sense
21 outside the jury box when you sit down. It is obviously
22 impossible to ascertain or prove directly what was the
23 operation of the mind, the intention of the defendant.
24 You cannot look into a persons' mind to see what his
25 intentions are or were. But a wise and intelligent

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2 consideration of all the facts and circumstances, shown by
3 the evidence and the exhibits in the case, will enable you
4 to infer, with a reasonable degree of accuracy, what were
5 the defendant's intentions at the time he gave the grand
6 jury testimony involved in this case.

7 Intent involves a mental attitude. With a knowl-
8 edge of a definite act and surrounding circumstances, you
9 may draw definite and logical conclusions.

10 In our everyday affairs, we are constantly called
11 upon to decide from the acts of others what their intentions
12 are. Experience has taught us that frequently acts speak
13 louder than words, more clearly than spoken or written
14 words. Therefore, you may well rely in part on circum-
15 stantial evidence in determining the guilt or innocence of
16 the defendant in this case.

17 Proof of the circumstances surrounding a man's
18 actions can supply an adequate basis for a finding that a
19 defendant acted knowingly and wilfully. The actions of man
20 must be set in their time and place. Just as the meaning
21 of a word is understood only in its relation to other words
22 in a sentence, so the meaning of a particular act may de-
23 pend on the circumstances surrounding it.

24 Thus, you may consider evidence which you recall
25 and believe about the defendant's actual knowledge of

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2 certain facts and occurrences as compared to the testimony
3 he gave about those facts and circumstances, the extent to
4 which statements were made to conceal facts or events;
5 and, in general, the manner in which certain actions were
6 undertaken by the defendant.

7 Now we are almost through.

8 You will recall that in stating the elements I
9 said that before you can convict the defendant of the
10 crimes charged in the indictment, you must, as one of the
11 elements, find beyond a reasonable doubt that he acted
12 "knowingly" and "wilfully". The false declarations statute
13 provides that the defendant is guilty of the crime when
14 he "knowingly makes any false material declaration."

15 What do those words, "knowingly" and "wilfully"
16 mean? First, let me tell you what those words do not mean.
17 They don't mean that the Government has to show that the
18 defendant knew he was breaking a particular law before
19 he can be convicted of a crime. They do not mean that the
20 Government has to show that the defendant intended to profit
21 at the expense of the Government or any other person.
22 Nor do they have anything to do with the defendant's per-
23 sonal or private reasons for violating the statute. For
24 if, after considering all the evidence in accordance with
25 my instructions to you, you come to the conclusion that the

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2 defendant violated the statute, then the defendant's per-
3 sonal or private reasons for violating the statute are of
4 no consequence so far as his guilt is concerned.

5 The words "knowingly and wilfully" mean deliber-
6 ately; they mean intentionally; they mean that the defendant
7 made the false statement or false statements with knowledge
8 that the statements were false, that he intended to make a
9 false statement consciously and in the free exercise of his
10 will. Those words, "knowingly and wilfully" are opposed
11 to the idea of an inadvertent or accidental misstatement.

12 For example, if the defendant, by innocent mis-
13 take, made an erroneous or incorrect statement, he would
14 not be guilty of the crime charged. If he made an erroneous
15 or incorrect statement due to a slip of the tongue or bad
16 memory, truly bad memory, or through a misunderstanding, he
17 would not be guilty of knowingly and wilfully making a false
18 declaration.

19 But if, at the time the defendant gave testimony
20 before the grand jury, he was aware of the fact that he was
21 making a false statement and if he knew and believed that
22 his statement was false at the time he made it, then he
23 was acting knowingly and wilfully, as these terms are used
24 in the statute governing the crime of false declarations.

25 Ladies and gentlemen, in reaching your conclusion

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2 in this case, use your common sense in evaluating the evi-
3 dence, the circumstances and the probabilities. Don't allow
4 yourselves, or any of you, to be swayed or carried away or
5 inflamed by appeals to passion or sympathy or bias.

6 Suspicion and conjecture shouldn't be substituted
7 for proof or prejudice. You must maintain a calm, clear
8 view of the case and not be sidetracked by anything or
9 anybody from a fair, dispassionate consideration of the
10 evidence in arriving at your resolution of the facts.

11 I want you to listen to each other carefully in
12 the jury room when you consider the matter. If, after dis-
13 cussion, you think you are wrong and somebody else is right,
14 don't be embarrassed about changing your opinion, but re-
15 member each of you has to decide the case for yourself.

16 Each count as to the defendant must be considered
17 separately. The verdict of guilty or not guilty as to any
18 count on which the defendant is charged to be acceptable
19 must be unanimous.

20 If you desire the indictment or any of the ex-
21 hibits, those will be sent to you in the jury room upon
22 request.

23 If you want any of the testimony read, that can
24 be done, also. Please don't communicate with me or anyone
25 else in this case, except in writing signed by your foreman,

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2 Miss Petrosino, and she will be provided with a pencil and
3 paper.

4 I would like to take a moment to talk to the law-
5 yers at the side bar. They may wish to call to my attention
6 any matter which I have overlooked or where I may have mis-
7 spoken. And I will ask you to relax for a moment while I
8 do that.

9 (At the side bar.)

10 THE COURT: Are there any exceptions or requests
11 on the part of the Government?

12 MR. SPEISER: The Government only requests that
13 you didn't charge the jury on request 24 introduced by the
14 Government, possible punishment.

15 THE COURT: Well, I don't think it is necessary
16 to discuss punishment in this case. While it is an en-
17 tirely appropriate charge, I don't think it is needed.

18 Are there any exceptions or requests on the part
19 of the defendant?

20 MR. WASHOR: There are no exceptions, your Honor.
21 The only request would be the general tenor as to those
22 matters that were submitted by the written requests; some
23 you did include in your charge, I noticed. I didn't want
24 to flip the papers during the charge because it makes
25 noise. I assume that which has been charged in your own,

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2 language is deemed requested and accepted by you. Those
3 which are not are denied, I assume.

4 THE COURT: No. If there is anything that you
5 consider appropriate to be charged, this is the time for
6 you to be specific about it, because this is the time when
7 that can be corrected, if it needs correction.

8 My impression is that the defendant's requests
9 to charge have been covered in the charge as delivered.
10 There is one request, I think it was number 4, which was
11 specifically covered and which seems to be a recurrent
12 theme throughout several of the defendant's requests.

13 If there is, however, anything that has been
14 omitted, that is material, that has not been covered, in
15 other words, you can call it to my attention now.

16 MR. WASHOR: Request number 7, based upon the
17 Bronston case.

18 THE COURT: It seems to me that has been covered
19 in substance in the main charge and I decline to charge it
20 further on the same subject.

21 MR. WASHOR: Surely, your Honor.

22 I believe I am required to except to the Court's
23 ruling.

24 Your Honor, you, by inadvertence, I assume, have
25 called the defendant Benjamin Greenberg on two occasions.

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2 I just think that you might correct that. I think you
3 ought to correct it.

4 THE COURT: All right. I will correct that.

5 MR. WASHOR: Thank you.

6 MR. SPEISER: Your Honor, I would like to make
7 one statement at this time: You properly instructed the
8 jury that should they request or have any of the exhibits
9 submitted to them, they may have those. With respect to
10 the grand jury transcript or the testimony of Benjamin
11 Eisenberg, there is one portion on page 55 in which he
12 himself responds that he was arrested and pled guilty to a
13 crime.

14 THE COURT: Take it out.

15 MR. SPEISER: I have prepared a redacted portion
16 but Mr. Washor has agreed, and I would like him to state on
17 the record that he has no objection, to the entire tran-
18 script going in to the jury including that reference to
19 his arrest.

20 MR. WASHOR: Absolutely I object to the redaction.
21 I utilized it in final argument.

22 THE COURT: Wait a minute. You don't want it
23 redacted?

24 MR. WASHOR: That is correct.

25 THE COURT: Why do you care?

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2 MR. SPEISER: I don't care but I want him to state
3 that on the record because there is a case in the circuit.

4 THE COURT: Mr. Washor is telling you that the
5 exhibit in its unredacted form is satisfactory to go to the
6 jury if the jury requests the grand jury minutes.

7 MR. SPEISER: Fine.

8 THE COURT: That's correct, isn't it?

9 MR. WASHOR: That's very much correct.

10 THE COURT: All right. That's the end of it.

11 (In open Court.)

12 THE COURT: My attention has been called to a
13 slip of the tongue. I referred to the defendant, who is
14 Benjamin Eisenberg, as Benjamin Greenberg on one or more
15 occasions. I am referring to the defendant Benjamin Eisen-
16 berg on all occasions.

17 Now, since all of the jurors, the 12 jurors, are
18 present, I am going to at this time excuse from further
19 participation the two alternates, Miss Denemeskeri, and
20 Mr. Johnson. Thank you very much for attending. You are
21 now excused. The Clerk will give you your cards. Please
22 report to Room 109 for further instructions.

23 (Two alternate jurors excused.)

24 THE COURT: The Clerk will swear the marshal.

25 (One Marshal sworn.)

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2 THE COURT: Miss Petrosino, I will give you the
3 copy of the indictment now, which you may wish to have for
4 convenience, and you may go out with the jurors and commence
5 your deliberations.

6 (At 10:55 a.m. the jury retired to deliberate.)

7 MR. WASHOR: Your Honor, would you permit me to
8 go to Room 318 to continue the trial? The matter of
9 participation will not involve me in any delay other than
10 some notice to the Clerk of that part, and within the time
11 that it takes to get the elevator, I can be here.

12 THE COURT: Yes, we will be in touch with the Clerk
13 of the part. And we will let you know as you are required.

14 MR. WASHOR: Thank you, sir.

15 MR. SPEISER: Your Honor, have you ruled on the
16 3500 material that I gave you for in camera inspection?

17 THE COURT: Yes. You furnished all that material
18 in redacted form and the material which was redacted does
19 not in my opinion constitute 3500 material. The defendant
20 has, therefore, received everything that he was entitled to.

21 I am returning your papers to you.

22 MR. SPEISER: Thank you very much, your Honor.

23 (Recess.)

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2 (Luncheon recess.)

3 (2:45 p.m. - jury present.)

4 BY THE CLERK:

5 Q Madam Forelady, have you agreed upon a verdict?

6 A Yes, we have.

7 Q How do you find the defendant Benjamin Eisenberg
8 on Count 1?

9 A Guilty.

10 Q Count 2?

11 A Guilty.

12 Q Count 3?

13 A Guilty.

14 Q Count 4?

15 A Not guilty.

16 Q Count 5?

17 A Guilty.

18 Q Members of the jury, listen to your verdict as
19 it stands recorded. You say that you find the defendant
20 Benjamin Eisenberg guilty as charged on each of Counts 1,
21 2, 3 and 5 and not guilty on Count 4.

22 (The jurors, upon being asked, "Is that your ver-
23 dict?" all answered in the affirmative.)

24 THE CLERK: So say you all.

25 THE COURT: Ladies and gentlemen of the jury, that

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2 completes your service in this case. Would you please be good
3 enough to report back to the Clerk in Room 109 for further
4 instructions as to your jury duty and any requirement for
5 jury duty for next week.

6 You are now excused. Thank you.

7 (Jury discharged.)

8 THE COURT: Mr. Washor?

9 MR. WASHOR: Yes, your Honor.

10 I would request, your Honor, that we reserve
11 motions until the date of sentence.

12 THE COURT: No, you won't reserve until that time.
13 You can make your motions now or put them in writing in the
14 usual time. It seems to me that in a matter of this kind
15 that you may be in a position to deal with them now.

16 MR. WASHOR: Well, your Honor, I would like to
17 reflect on them and submit a memorandum to the Court within
18 the prescribed time period. There will be obviously no
19 delay in that being taken care of.

20 THE COURT: All right. I will do this: I will
21 advise you now that I regard the evidence sufficient and
22 the verdict amply justified on the issues of fact that were
23 submitted to the jury.

24 If there are any other matters that you want to
25 call to my attention, I suggest you address yourself to

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2 those.

3 MR. WASHOR: I see, Judge.

4 THE COURT: A pre-sentence report will be ordered
5 here and the date for sentence will be March 8, 1976, at
6 11:00 a.m. Make that March 9th.

7 MR. WASHOR: The same time, your Honor?

8 THE COURT: 11:00 a.m. In courtroom 506.

9 What's the situation as to bail here?

10 MR. SPEISER: Your Honor, I believe there is a
11 \$7500 cash or surety bond.

12 THE COURT: Any reason why that should not be
13 continued pending sentence?

14 MR. SPEISER: The Government has no objection to
15 that.

16 THE COURT: The bail is continued accordingly.

17 MR. WASHOR: Thank you, sir.

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UNITED STATES DISTRICT COURT
Southern District of New York

UNITED STATES OF AMERICA

Docket Number

75Cr850

Judge Pollack

-against-

BENJAMIN LISLBERG,
Defendant

(District Court Judge)
Defendant's Address:
7015 Yellowstone Boulevard
Queens, N.Y.

NOTICE OF APPEAL
Benjamin Lisenberg

Notice is hereby given that _____ appeals to

the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other
(specify) of conviction entered in this action on March 9, 1976

(Date)
Michael Mashor

Date March 10, 1976
To: U.S. Attorney
Southern District of N.Y.

Address

Archibald L. Appelbach, of Counsel
11 Park Place
N.Y.C., N.Y. (10007)
Tel. 212-7-0959

Phone Number

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

- ☐ I am ordering a transcript
☐ I am not ordering a transcript

Reason:

- ☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

- Prepare transcript of
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE March 10, 1976

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

COPY FOR DEFENDANT

REQUEST NO. IV.

This jury must also determine whether the defendant, BENJAMIN EISENBERG, knew what the questions meant at the time he testified before the Grand Jury. If you find that the questions posed before the Grand Jury were vague and ambiguous, then it would be impossible for you to determine in an objective sense what the questions meant to the defendant at the time he answered said questions.

U.S. v. Slutzky, 79 F. 2d 504

U.S. v. Lattimore, 127 F. Supp. 405, aff'd
232 F. 2d 234

REQUEST NO. V

You must further consider if the answers by BENJAMIN EISENBERG were responsive or unresponsive. If you conclude that the answers by BENJAMIN EISENBERG were unresponsive and reflect a misunderstanding, then BENJAMIN EISENBERG must be found not guilty.

U.S. v. Colbert, 227 F. Supp. 915
Galano v. U.S. 49 F. 2d 398

REQUEST NO. VI

The Government must prove beyond a reasonable doubt and must affirmatively show from the record that there was a mutual meeting of the minds between the witness and the questioner. In other words, if the questions were equivocal and subject to more than one interpretation and meaning, then the answers cannot be considered perjurious.

U.S. v. Lattimore, 127 F. Supp. 405, aff'd
232 F. 2d 234.

REQUEST NO. VII

If you find that the defendant, BENJAMIN EISENBERG, answered truthfully but unresponsively to a question, you must find him not guilty.

Bronston v. U.S., 409 U.S. 359

REQUEST NO. VIII

If you find that the questions were inarticulately phrased and susceptible of more than one interpretation, even though you conclude that the Government has established a contradiction, within one or more of the meanings of said question, you cannot find the defendant, BENJAMIN EISENBERG, guilty.

U.S. v. Wall, 371 F. 2d 398

REQUEST NO. XI

I charge you, as a matter of law, that mere false and evasive declarations alone, are not sufficient to constitute obstruction of justice.

U.S. v. Essex, 407 F. 2d 214

REQUEST NO. XIII

The defendant is not on trial for any act or conduct not alleged in the indictment. You must consider the evidence solely with respect to the specific charges in the indictment and render your verdict based solely upon such charges.

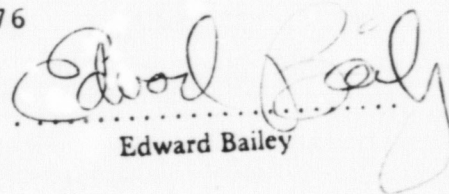
WASHOR

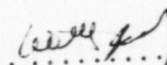
AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 9 day of April, 1976 at No. 1 St. Andrews Plaza, NYC deponent served the within Appendix upon U.S. Atty. So. Dist. of NY as the Appellee herein, by delivering a true copy thereof to him impersonally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 9 day of April 1976


Edward Bailey


.....
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978 1977